

EXHIBIT A

**Abolitionist Law Center, *No Escape: Exposure to Toxic Coal Waste
at State Correctional Institution Fayette***

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at State Correctional Institution Fayette**



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Center for Coalfield Justice,
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and to the prisoners of SCI Fayette whose
correspondence laid the foundation of this report.



AERIAL VIEW OF SURFACE PERMITS — LABELLE, PA



Legend

- Canestrals Prep Plant Permit Area
- Canestrals Refuse Permit Area
- Alpha Resources Permit Area

1 inch = 1,000 feet



This map shows the aerial extents of the Canestrals Prep Plant Permit Area, Canestrals Refuse Permit Area, and Alpha Resources Permit Area of LaBelle, Fayette County, PA.

Sources:
Permit areas were digitized off mine maps located at the PA DEP California District Office. Aerial Imagery was obtained from PAMAP Program, PA DCNR.

Coordinate/Projection System:
NAD_83_UTM_Zone_17N

Prepared by:



Commonwealth of Pennsylvania
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The Department assumes no responsibility for the accuracy or completeness of this information.



I. OVERVIEW

*I have four years left on my sentence and that could be a death sentence with the contamination here.*¹

Surrounded by “about 40 million tons of waste, two coal slurry ponds, and millions of cubic yards of coal combustion waste,” SCI Fayette is inescapably situated in the midst of a massive toxic waste dump.

A 12-month investigation into the health impact of exposure to toxic coal waste on the prisoner population at State Correctional Institution (SCI) Fayette has uncovered an alarming rate of serious health problems. Surrounded by “about 40 million tons of waste, two coal slurry ponds, and millions of cubic yards of coal combustion waste,” SCI Fayette is inescapably situated in the midst of a massive toxic waste dump.² Over the past year, more and more prisoners have reported declining health, revealing a pattern of symptomatic clusters consistent with

exposure to toxic coal waste: respiratory, throat and sinus conditions; skin irritation and rashes; gastrointestinal tract problems; pre-cancerous growths and cancer; thyroid disorders; other symptoms such as eye irritation, blurred vision, headaches, dizziness, hair loss, weight loss, fatigue, and loss of mental focus and concentration.

The Human Rights Coalition (HRC), Center for Coalfield Justice (CCJ), and the Abolitionist Law Center (ALC) launched this investigation in August 2013. The investigation is not only ongoing, but also is expanding, as HRC and ALC continue to document reports of adverse health symptoms and environmental pollution, interview current and former prisoners at SCI Fayette, and conduct research.

No Escape describes the preliminary findings from our investigation into the declining health of prisoners at SCI Fayette while providing context about the toxic environment surrounding the prison.

Our investigation found:

- More than 81% of responding prisoners (61/75) reported respiratory, throat, and sinus conditions, including shortness of breath, chronic coughing, sinus infections, lung infections, chronic obstructive pulmonary disease, extreme swelling of the throat, as well as sores, cysts, and tumors in the nose, mouth, and throat.
- 68% (51/75) of responding prisoners experienced gastrointestinal problems, including heart burn, stomach pains, diarrhea, ulcers, ulcerative colitis, bloody stools, and vomiting.
- 52% (39/75) reported experiencing adverse skin conditions, including painful rashes, hives, cysts, and abscesses.
- 12% (9/75) of prisoners reported either being diagnosed with a thyroid disorder at SCI Fayette, or having existing thyroid problems exacerbated after transfer to the prison.

- Eleven prisoners died from cancer at SCI Fayette between January of 2010 and December of 2013. Another six prisoners have reported being diagnosed with cancer at SCI Fayette, and a further eight report undiagnosed tumors and lumps.

Unlike reports of health problems from prisoners at other Pennsylvania Department of Corrections (PADOC) prisons, most SCI Fayette prisoners discuss symptoms and illnesses that did not emerge until they arrived at SCI Fayette. The patterns of illnesses described in this report, coupled with the prison being geographically enveloped by a toxic coal waste site, point to a hidden health crisis impacting a captive and vulnerable population. Our investigation leads us to believe that the declining health of prisoners at SCI Fayette is indeed caused by the toxic environment surrounding the prison; however, the inherent limitations of the survey do not establish this belief at an empirical level. A substantial mobilization of resources for continued investigation will be required to confirm the relationship between prisoner health and pollution from coal refuse and ash.

Our findings raise serious constitutional questions as well. The investigation has uncovered significant evidence that SCI Fayette may be unconstitutional based on its location. Under the Eighth Amendment to the U.S. Constitution's prohibition against cruel and unusual punishment, prisons are forbidden from imposing conditions of confinement that deprive prisoners of basic human needs. Situating a prison in the midst of a massive toxic coal waste dump may be impermissible under the Constitution if it is shown that prisoners face a substantial risk of serious harm caused by exposure to pollutants from the dump.

In addition to evidence that conditions of confinement at SCI Fayette violate the Constitution due to the prison's proximity to the toxic coal dump, our investigation found that prisoners' rights to medical care under the Eighth Amendment to the Constitution are reportedly violated on a regular basis. Prison officials are required to provide necessary medical care to those in their custody, and deliberate indifference to a prisoner's serious medical needs is unconstitutional.

Health is a human right, and if the patterns that have emerged during our investigation are indicative of the harms and risks that accompany confinement at SCI Fayette, then it is imperative that the prison is shut down.

The preliminary findings discussed below are intended to shine a spotlight on a serious and growing injustice, as well as to highlight one of the ways that mass incarceration interacts with broader concerns about environmental health and justice. Prisoners at SCI Fayette need environmental justice: access to clean air and water, prompt diagnostic care, required surgical treatment, and all other necessary medical care. Health is a human right, and if the patterns that have emerged during our investigation are indicative of the harms and risks that accompany confinement at SCI Fayette, then it is imperative that the prison is shut down.

II. BACKGROUND ON THE LABELLE COAL REFUSE DISPOSAL AREA

LaBelle is a small rural-Pennsylvania community in Luzerne Township, Fayette County, which is defined by two major industries: a 506-acre coal ash dump and a maximum security state prison. The dump, operated by Matt Canestrone Contracting (MCC) since 1997, receives coal ash waste from coal-fired power plants throughout the region.³

Before MCC began dumping coal ash there in the late 90s, the site was one of the largest coal preparation plants in the world, where coal from nearby mines was washed and graded.⁴ The “cleaned” coal was then shipped overland and by barge on the Monongahela, while the remaining coal refuse was dumped on and around the site.⁵ By the mid-90s, an estimated 40 million tons of coal refuse were dumped at the site, over hundreds of acres and “at depths approaching 150 feet in some places.”⁶

In 1994, the former owner of the site filed for bankruptcy and abandoned operations, leaving numerous legacy waste issues over the extent of the 1,357-acre property.⁷ In 1996, MCC purchased the entire property and subsequently entered into an agreement with the Pennsylvania Department of Environmental Protection (DEP) to engage in coal refuse disposal for site reclamation.⁸ The dumpsite was later restricted to its current 506-acre footprint,⁹ in part through the transfer of 237 acres to the Commonwealth of Pennsylvania for the construction of SCI Fayette.¹⁰

Operation of the Coal Ash Dump and Environmental Effects

As discussed above, “coal refuse” describes the waste produced when coal is cleaned and graded before it is burned. “Coal ash,” on the other hand, describes the wastes produced by burning coal in power plants. MCC’s reclamation plan is to “cap” the coal refuse dump by spreading flue gas desulfurization (FDG) sludge, a liquid form of coal ash, over the entire area to create a barrier preventing rainwater from leaching chemicals into soil, surface water, and groundwater.¹¹ The FDG cap is then covered with a mixture of dry coal ash and topsoil.¹² This mixture of coal ash and topsoil is also used to stabilize a dam holding back a large pond of coal slurry (Slurry Pond 3).¹³ This dam is categorized as a “high” hazard, meaning that its failure is “likely to cause loss of human life.”¹⁴

In the 17 years that MCC has been operating the dump, the company has routinely been in violation of state and federal law.

In the 17 years that MCC has been operating the dump, the company has routinely been in violation of state and federal law.¹⁵ Most seriously from a public health standpoint, is MCC’s perpetual violation of the Air Pollution Control Act, which prohibits allowing particulate matter to leave the boundaries of the dumpsite.¹⁶ Ash is regularly seen blowing off the site or out of haul trucks and collecting on the houses of local residents as well as the prison grounds at SCI Fayette.¹⁷ Local residents have filed numerous complaints to the DEP in recent years, but the DEP has done little more than issue notices of violation, and in rare instances assessed fines against MCC.¹⁸

A series of tests performed by Citizens Coal Council (CCC), a national advocacy group which filed a lawsuit against MCC in 2013 for its violations of environmental regulations, revealed the presence of high levels of toxic metals associated with coal ash in the surface and ground water near the site.¹⁹ Samples were taken at streams, wells, and drainage pipes which tested at levels of dissolved iron over 60 times greater than the Pennsylvania standard, more than 5 times the Pennsylvania standard for manganese, and 10 times the standard for sulfate.²⁰ The most recent tests performed by CCC also found levels exceeding state or federal standards for thallium (0.4µg/L), arsenic (15.1µg/L), cobalt (33µg/L), boron (2,550µg/L), aluminum (343µg/L), total dissolved solids (4,510mg/L), and both excessively high and low pH levels.²¹ Testing for Stream 3, which marks the southern and eastern boundaries of SCI Fayette, found excessive levels of arsenic, boron, cobalt, iron, manganese, and sulfate.²²

Luzerne had 170 heart-disease deaths from 2000 through 2008 — 26 percent higher than the national average.

In the nearby town of LaBelle, the most likely form of exposure to these toxins is inhalation of the particulate matter that blows off the site and the haul trucks.²³ Dust found on the properties of LaBelle residents reportedly included coal ash particles, which had “Mine Dump levels of antimony, arsenic, chromium and lead consistent with levels found in ash.”²⁴ Many

residents of LaBelle suffer from chronic headaches and fatigue, respiratory problems, kidney failure, and several forms of cancer.²⁵ In 2010 the Pittsburgh Post Gazette reported that in one section of LaBelle, “residents say there are nine cases of cancer in the 18 houses.”²⁶ The report went on to say, “While there’s no scientific proof that fly ash or other forms of pollution are causing [these] health problems, Luzerne Township has elevated mortality levels for diseases that have been linked to pollution exposure... Luzerne had 170 heart-disease deaths from 2000 through 2008 — 26 percent higher than the national average.”²⁷

These problems are likely to get worse with more coal and coal ash planned for the dump and the nearby river docks. On June 24, 2014, DEP renewed MCC’s air emissions permit, allowing it to transport and dump 416,000 tons of coal ash per year at LaBelle.²⁸ However, MCC has reportedly entered into a “long-term agreement” with FirstEnergy to receive “more than 3 million tons of coal ash and smokestack scrubber waste each year,” and dump it at the Labelle site beginning in 2017.²⁹ The agreement allows FirstEnergy to dispose of ash that would have gone to the Little Blue Run dump in Beaver County, which was recently ordered to close due to the health threat it poses to nearby residents.³⁰ Meanwhile, the U.S. Army Corps of Engineers is granting a permit to Alpha PA to build a new coal terminal at the Labelle Dock,³¹ while DEP has announced its intent to increase the permitted coal throughput of the facility from 3,500,000 tons per year to 10,000,000 tons per year.³² Alpha PA is a subsidiary of Alpha Natural Resources, which was recently assessed a record fine of \$227,500,000 for seven years of illegally discharging pollutants into the waters of Pennsylvania, Kentucky, Tennessee, Virginia, and West Virginia.³³

Public health experts recognize that coal ash contains numerous harmful constituents, including mercury, lead, arsenic, hexavalent chromium, cadmium, boron, and thallium.³⁴ The chemicals in coal ash can cause or contribute to many serious health conditions including: skin, eye, nose and throat irritation; asthma; emphysema; hypertension; anemia; heart problems; nervous system damage; brain damage; liver damage; stomach and intestinal ulcers; and many forms of cancer including skin, stomach, lung, urinary tract, and kidney cancers.³⁵ In its 2010 report, “Coal ash: the toxic threat to our health and environment,” Physicians for Social Responsibility summarized the risks posed by coal ash: “In short, coal ash toxics have the potential to injure all of the major organ systems, damage physical health and development, and even contribute to mortality.”³⁶

Despite this, the U.S. Environmental Protection Agency (EPA) does not currently classify coal ash as a hazardous waste, though reclassification has been under consideration since 2010.³⁷ In Pennsylvania, coal ash is authorized for “beneficial use” in reclamation projects, such as at MCC’s dump.³⁸ When authorized for “beneficial use” coal ash is intended to reduce leaching and balance the pH at coal refuse sites and abandoned coal mines. However, in attempting to solve these problems “beneficial use” creates new ones by increasing the toxicity of the leachate at reclamation sites,³⁹ while also causing air pollution as wind blows ash off the sites and the vehicles used to transport the material.⁴⁰ With this in mind, it does not appear that coal ash has a legitimate “beneficial use” that outweighs its negative environmental and health consequences. Rather, it seems the classification of coal ash for “beneficial use” is designed to evade the cost of safely regulating the massive volume of coal ash created by coal-fired power plants, which is the country’s second largest waste stream.⁴¹

III. ILLNESS, NEGLECT, AND CANCER: FINDINGS OF PRELIMINARY INVESTIGATION INTO PRISONER HEALTH AT SCI FAYETTE

*I have 37-months in on a five to ten year sentence and fear
that I will not live to see my 13-year old son.*⁴²

In August 2013, the Center for Coalfield Justice (CCJ), a Washington, PA-based environmental justice group, the Human Rights Coalition (HRC), a statewide prisoners’ rights group, and the Abolitionist Law Center (ALC) launched an investigation into the health problems at SCI Fayette. The investigation team sent surveys to prisoners inquiring about health problems and environmental conditions at the facility. As of July 2014, the investigation team has sent 152 surveys, with 63 prisoners responding to the surveys, and another 12 prisoners writing us separately to share their stories about conditions at SCI Fayette. The investigation team also visited and interviewed 4 prisoners who were dealing with particularly severe symptoms.

Some prisoners have consented to having their names used and are identified below. Certain names have been withheld and dates have been altered in order to protect the identities of the people providing the information. All factual information pertaining to prisoner medical conditions, health care treatment, and evidence of pollution is shared exactly as reported.

When reviewing the findings described below it is important to recognize that under-reporting of health problems is common amongst the prisoner population. Prisoners may be reluctant to admit health problems for fear of being perceived as weak or vulnerable. Others may be unwilling to report their health condition or complain about medical care to an outside organization because they fear retaliation from prison staff. Some prisoners are too sick to correspond about their condition, others remain unaware that their symptoms may be caused by exposure to toxic coal waste, or that our investigation is occurring.

The investigation has found alarming patterns of illness. The conditions reported most frequently by prisoners are described below. In over 81 percent of cases (61/75), prisoners exhibited more than one symptom from the four main categories we used to organize the data: respiratory, throat, and sinus conditions; skin irritation, rashes, and hives; gastrointestinal problems; and cancers. Thus, the information below does not fully capture the severity of many cases in which prisoners have multiple overlapping symptoms. For example, the list of symptoms from Joshua Turner was typical of many reports we received from prisoners:

I'm writing to notify you of the severe problems I've been having since I have been in SCI Fayette for over 2 years. I'm going to give you a list of the problems I'm having: 1) hair loss; 2) [recurring] rashes; 3) diarrhea; 4) vomiting; 5) weakness and dizziness and sickness feelings in my stomach; 6) when I blow my nose blood comes out; 7) shortness of breath; 8) burning in my eyes; 9) throat problems; 10) headaches; 11) burning when I pee.⁴³

Correlation Between Illness and Confinement at SCI Fayette

Unlike prisoners writing about health problems from other PADOE prisons, most prisoners from SCI Fayette discuss symptoms and illnesses that did not emerge until they arrived at the prison. The patterns of illnesses described below, coupled with the prison being geographically enveloped by “about 40 million tons of waste, two coal slurry ponds, and millions of cubic yards of coal combustion waste,”⁴⁴ suggest that environmentally toxic living conditions are causing prisoners to become sick.

Prisoner accounts of symptoms graphically illustrate this correlation:

I have been evaluated by medical when I came here and everything was fine and I was healthy. Since being here I get nosebleeds 2 to 3 times a week. I constantly got a headache. I have known that my vision has dropped a lot and it is hard to see. I wear glasses, and they are now not strong enough to see good.

I was also checked for asthma when I got here due to having it in the past. And I was fine. I haven't had no problems with breathing in years. More than 8 years [since] I have had to use an inhaler. Since being in this jail I am wheezing on a day to day basis.⁴⁵

In April 2013, Marcus Santos wrote:

[S]ince transfer to this facility on February 14, 2012 I've had to endure numerous medical problems... I have required emergency medical treatment eight times due to the swelling in my face and throat.

[S]ince my transfer to this facility on February 14, 2012 I've had to endure numerous medical problems. ie: Rashes through out my body that hurt and keeps me up all night. Extreme swelling of various parts including my throat making it difficult to breathe. My face would swell and pictures were taken showing the condition of my eyes and my vision still has not returned fully to them. I have required emergency medical treatment eight times due to the swelling of my face and throat.⁴⁶

This relationship between confinement at SCI Fayette and declining health was further reinforced when Marcus Santos was transferred to another prison. Since Marcus arrived at SCI Smithfield his symptoms subsided substantially or completely. He still suffers periodic swelling and outbreaks of rashes, though they are less frequent and less severe. He no longer experiences nausea or shortness of breath. He still suffers from dizzy spells, but these are also less frequent and less severe. His muscles still hurt, however, which is something else that began at SCI Fayette.⁴⁷

Another prisoner shared this story:

Second week of coming into SCI Fayette, I came down with flu-like symptoms. A few months later I maybe would eat dinner 3 times a week, I cut out breakfast and lunch altogether because I had no appetite, and was too fatigued to walk to the chow hall. I no longer had the strength to workout... Just constant headaches and loss of appetite and physical motivation. When I took showers, I noted that my eyes would be burning and my vision would be blurred for about 15 minutes, afterwards, and it would feel like sand was in my eyes. These symptoms have been going on almost since the time I came into Fayette, but now that I'm at [another prison] I'm eating every meal, working out every day, and experiencing no headaches...⁴⁸

The emergence of these symptoms upon arriving at a prison engulfed by toxic waste and the abruptness with which they subside upon being transferred strongly suggests a causal relationship. The patterns of illness uncovered during our investigation are also consistent with exposure to toxins found in coal ash and refuse.

Respiratory, Throat and Sinus Conditions

Respiratory, throat and sinus conditions are the most commonly reported health problems. Over 81% (61/75) of prisoners reported one or more of the following symptoms: runny nose, nose bleeds, sinus infection, cough, sore throat, swollen

throat, shortness of breath, lung infections. In most cases these symptoms have become chronic conditions that cannot be explained as periodic colds.

One prisoner who has been incarcerated at SCI Fayette since 2004 reports a long history of respiratory and sinus problems that originated upon his arrival at the prison. His symptoms began with “throat and chest congestion” and “itchy red eyes.” Then, “I started to have other symptoms, like when my lymph nodes in my neck swelled to the size of walnuts for no good reason... the development of a chronic sinus infection... followed by the cyst that grew under one of my teeth that led to it having to be pulled... I am currently fighting a lung infection for which I am on breathing treatments.”⁴⁹

Lance Rucker reported “serious throat irritation” and chronic wheezing shortly after arriving at SCI Fayette,⁵⁰ while another prisoner wrote of suffering from a severe cough for eight months that caused him to “cough so hard” that he developed “blood blisters” in the back of his throat.⁵¹ Michael Dean described throat irritation that was so severe he lost his voice:

*In December of 2012, I lost my voice completely. My throat was in constant pain, yet all medical did was to try whatever drug they felt would cure what was wrong with me. I was given mostly drugs used to treat a sore throat. By February or March, I was given a drug called “Claritin,” as they believed I was suffering due to “acid reflux.” I was eventually taken to UPMC in Pittsburgh, where it was found I had a large growth on my vocal chords. I underwent surgery on April 27, 2013, where the growth was removed. I have regained some vocal abilities but I’m not the same as before. Also, I am still having sinus troubles as there seems to be a recurring growth in my right sinus.*⁵²

Anthony Willingham reported a similar occurrence:

After six to nine months here, I began to develop more frequent shortness of breath and heavy mucus discharge. It became so chronic that I had to have breathing treatments daily — morning and evening. The cough became so violent that I developed a chronic hoarseness and scratchy throat. To this day I can barely talk. I was told by the medical department it was just a “scratchy throat — gargle with warm salt water.”

I was told by the medical department that it was just a “scratchy throat — gargle with warm water.” A year later I found out it was far more than a scratchy throat!... Upon seeing a throat surgeon at UPMC... he put a camera down my throat...and showed me the polyps on my vocal chords.

A year later, I found out that it was far more than a scratchy throat! It was around this time that I discovered a growth, in my mouth, under my tongue. The dental surgeon removed it and sent it out for biopsy and it came back negative; however, the growth came back in two weeks, twice as big. This time after a second biopsy, it came back positive — I had cancer.

Upon seeing a throat surgeon at UPMC (Dr. Jonas Johnson) he explained to me the type and location of the cancer; moreover, he questioned me about how long my voice was so

*hoarse? I told him about a year-plus. He put a camera down my throat (still shaking his head in disbelief) and showed me the polyps on my vocal chords. It wasn't just a scratchy throat!*⁵³

Marcus Santos experienced swelling in his throat, as well as on his face, arms and legs, which became so severe that it restricted his breathing, causing him to fear for his life. A doctor outside the prison who examined Marcus recommended his transfer to another prison because his condition was life-threatening. Marcus reported:

*I suffered almost everyday of the 15 months I was at that prison. I almost died due to throat swelling several times. Given tums for throat swelling and told that if I start choking there is nothing that he can do for me. At that point it became clear to me that I am being left for dead. With no other course to take or relief in sight I called my brother and told him that I don't believe I'm going to make it through the rest of my time and to please take care of my son.*⁵⁴

Skin Irritation and Rashes

52% (39/75) of prisoners report some type of skin condition. Many note that their skin is chronically dry and irritated, and a number report severe rashes and hives. Four weeks after being transferred to SCI Fayette, Roy Davis wrote, "My face began itching and burning about three days after being here and now it's completely inflamed and hurts to the touch."⁵⁵ Soon after his arrival, Marcus Santos developed a rash on his left side with large welts that was so irritated it disrupted his sleep for months.⁵⁶

In another case, a prisoner developed a rash that covered three-quarters of his body with large bumps a half-inch in diameter. In 48 hours, "The bumps grew into one big mound on my arm. Almost my entire body was covered a week later. The bumps were the color of my skin. They leaked fluid. They are painful. They felt like needle pricks, some felt like needle stabs." Prison medical staff later diagnosed his condition as psoriasis.⁵⁷ When asked to describe any additional health problems, another prisoner reported "Abscesses (boils)... keeps comin and going first under my L armpit, then R, and then in my ear canal, and in my large intestine."⁵⁸ A few prisoners also reported raised bumps or rashes that would bleed.⁵⁹

Gastrointestinal Tract Problems

Well over half (51/75; 68%) of prisoners reported problems with their stomachs and digestive tracts, including: heart burn, stomach and abdominal pain, vomiting, diarrhea, bloody stools, duodenal ulcers, ulcerative colitis, and intestinal polyps. For many prisoners, these symptoms have become chronic, lasting multiple years, and suggesting systemic problems, rather than common infections.

Five prisoners report persistent bloody stools. One prisoner wrote that he had "blood in feces and urine, as well as constant vomiting." These symptoms were accompanied by "headaches, severe skin dryness, blurry vision, kidney and liver

pain,” and kidney stones. None of these symptoms were present before the prisoner arrived at SCI Fayette.⁶⁰ Another prisoner wrote, “Since I’ve been here I’ve been unable to have a regular bowel movement.”⁶¹

Three prisoners have been diagnosed with ulcerative colitis, a rare disease in which ulcers form in the colon causing severe diarrhea and bloody stool. Some research suggests that environmental factors can contribute to the development of ulcerative colitis and other inflammatory diseases in the gastrointestinal tract.⁶² One of the prisoners with the disease explains:

I was having frequent bowel movements that consisted of nothing but diarrhea and blood... As time went by, my condition got worse to where I could not even drink water without having a bloody bowel movement... I was taken to Allegheny General Hospital’s emergency room... and was diagnosed as bleeding internally and severely dehydrated. I was given a colonoscopy and was diagnosed with ulcerative colitis.”⁶³

Cancers

Between January 2010 and December 2013, seventeen prisoners died while at SCI Fayette.⁶⁴ Eleven of these deaths (64.7%) were due to cancer, four (23.5%) were caused by heart attacks or strokes, and two were caused by liver failure (11.7%).⁶⁵ Of the 75 prisoners we received responses from, six reported being diagnosed with cancer while at SCI Fayette (8%). Eight of the prisoners we communicated with reported undiagnosed tumors and polyps (10.6%).

Of the total diagnosed cases of cancer, both dead and living, the type and frequency of particular cancers were as follows: lung cancer (3); brain cancer (2); colon cancer (2); tongue cancer (2); liver cancer (2); tonsil cancer (1); stomach cancer (1); bladder cancer (1); prostate cancer (1); lymphoma (1); and leukemia (1). Prisoners reporting undiagnosed tumors and polyps mentioned the following affected areas: testicles (3); vocal chords (2); intestines (1); lungs (1); and unspecified (1).

Many prisoners report that prison medical staff delay diagnostic treatment, and are reluctant to conduct more expensive testing that may reveal the presence of cancer.

Some of these undiagnosed growths, tumors, and polyps have been surgically removed or recommended for surgery by outside medical experts, while others have yet to be seriously examined. Many prisoners report that prison medical staff delay diagnostic treatment, and are reluctant to conduct more expensive testing that may reveal the presence of cancer. Such reports reveal what amounts to a pattern of medical

neglect, where prison medical personnel consistently attribute prisoner complaints to minor ailments, which are then treated with antibiotics, antacids, allergy medication, antibacterial lotions, aspirin, and ibuprofen. As a result, many of the cancer diagnoses reported to us were done only after the disease had progressed to the point that the prisoner needed emergency hospital care. For instance, an individual diagnosed with brain cancer wrote:

I've been asking medical for some type of CT scan for years because I was having headaches everyday. They keep telling me it was my sinus but I knew it was more than that. They sent me out for a CT scan and when I return, the medical staff here told me nothing was on my CT scan and they did not see anything. The day after that I passed out and was rush to Allegheny Hospital. They took another CT scan and found the cancer, it was at stage four and went to my skull.⁶⁶

Two prisoners shared a similar story regarding the late Rafael Rivera, a prisoner who had been complaining of stomach pains for months only to be treated with heartburn medication. By the time he was “carried to medical where x-rays were finally taken [doctors found] a stomach cancer that was far along.”⁶⁷ Official PADOC records obtained via a Right-to-Know request confirm that Rafael Rivera died of stomach cancer at SCI Fayette on June 15, 2012.⁶⁸

In another report, Paul Kimble writes:

I have had surgery done at UPMC hospital and Westmoreland hospital one for a hernia and another at the other hospital for polyps in my intestines, where they had to go through my colon to have one cut out plus there is another one still there that will have to be cut out. I was bleeding in my stool here in this prison. I was two pints low in blood, when I was finally taken out to the hospital.⁶⁹

Anthony Willingham similarly reported having surgery to remove a cancerous growth from under his tongue, but being left with polyps that still need to be removed:

Dr. Johnson assured me that all would be well again. He would remove the cancer in one surgery and the polyps during the second. Be advised that the second surgery never happened. The Department of Corrections and or the medical contractor (Wexford Medical) refused to pay for the second surgery, stating that it was an elective procedure, not a life sustaining procedure.⁷⁰

David Ladlee reports that SCI Fayette prison officials have repeatedly denied a CT scan to monitor two undiagnosed masses found in his lungs, despite having been recommended by outside medical experts:

I am appealing Ms. Berrier's findings of the initial review response. She states that, “Your reports were reviewed for the past several years and there has been no change.” This is not factually true. When I was at SCI Rockview in late 2009, a mass was found in 1 of my lungs. In 2011, I was sent to Westmoreland Hospital from here for treatment of pneumonia. While there, a CT scan was performed which showed not only the 1 mass but a 2nd mass was found. The treating doctor at Westmoreland Hospital had ordered a series of follow up CT scans to track the growth of these masses in my lungs.

There has been changes in the past several years and for Ms. Berrier to state that there has not been changes is mind blowing.

Ms. Berrier in the initial review had also stated that the CT scan, “is not medically necessary at this time.” ...You can see the masses in my lungs by just looking. This is why CT scans are necessary. I realize this costs money but I am under your care, custody and control.

At sick-call in early summer of this year I was told that a CT scan was ordered. This past September I had written a request inquiring about the CT scan in which a M. Hancock responded that, “The CT scan in August was cancelled.” Ms. Berrier in the initial review response had also stated that the CT scan, “Is not medically necessary at this time.” When is medically necessary, when I am dead? You can see the masses in my lungs by just looking. This is why CT scans are necessary. I realize this costs money but I am under your care, custody and control.⁷¹

There are almost certainly more cases of cancer at SCI Fayette than our preliminary investigation has uncovered. Along with the cases of undiagnosed growths, many prisoners report knowing of others who have cancer. The investigation received unconfirmed reports of three guards at SCI Fayette who have been diagnosed with kidney cancer in recent years, and another with throat cancer.⁷² It is possible that some prisoners who have become ill with cancer while at SCI Fayette were subsequently transferred to other prisons, complicating the process of counting people made ill at SCI Fayette. Prisoners report that the severely ill are often transferred to SCI Laurel Highlands, a prison-hospital, once they become so sick that death appears imminent.

Other Symptoms and Illnesses

Some prisoners report experiencing repeated instances of kidney stones for the first time while at SCI Fayette:

“A year ago I had surgery to have [kidney] stones removed, and once again in June 2013 (two surgeries). Now here it is no more than three months later and I was sent to Uniontown Medical Center for a CT scan and the pictures show I have more kidney stones than ever before.”⁷³

Another prisoner writes: “[I]n my four years at Fayette, I had several bouts with passing stones. I never had any trouble prior to going to Fayette, but I’ve had trouble several times each year.”⁷⁴ Two other prisoners reported having their gallbladders removed, in one case due to gangrene.⁷⁵

Several prisoners report extreme weight loss. In one instance, a prisoner reported losing 54lbs in a month and a half.⁷⁶ Another prisoner reported losing 40lbs over a period of three months.⁷⁷

Thyroid conditions were reported by 12% of prisoners (9/75). The range of symptoms reported by these prisoners included irritation and swelling in the throat, bloody noses, headaches, fatigue, dizziness, stomach pain, diarrhea, blurry vision, hair loss, ear pain and infections, problems with memory and concentration, numbness, muscle spasms, an inability to control arms and legs, and severe weight loss.

Nicholas Morrissey, a prisoner diagnosed with Graves Disease, which is an autoimmune disorder that causes hyperthyroidism, writes:

I am an inmate at SCI Fayette. I've been here since March 2008. About a year ago my health went downhill. One day I woke up and it was difficult for me to walk and see. This continued for a couple of days and my symptoms got worse. I started getting dizzy and I couldn't keep my balance and I started getting a numbing feeling in the left side of my body...

I can't even control my body anymore... My life has been completely changed in the last year...

I went from a athletic and healthy person to a frail sickly man who can barely walk...

*... I started getting more symptoms including loss of function in my arms and legs, blurry vision, confusion, memory loss, hair loss, laziness, diarrhea, tingling sensations in my face, arms, and legs, difficulty walking, extreme weight loss, and non stop muscle spasms. I can't even control my body anymore... My life has been completely changed in the last year... I went from a athletic and healthy person to a frail sickly man who can barely walk... There are dozens of other inmates who have just recently come down with the same thyroid condition I have...*⁷⁸

Another prisoner reports being told that there is no treatment for hyperthyroidism:

*From March 2012 until June 2012 the medical staff here at SCI Fayette gave me a bloodtest at least 10 to 15 times. In April 2012 as a result of the bloodwork I was told that I have hyperthyroidism. The doctor also told me that there isn't any treatment for hyperthyroidism... that they can only treat hypothyroidism. Finally, I found a medical dictionary that states that there is two types of medication for hyperthyroidism.*⁷⁹

Medical Care at SCI-Fayette

Prison medical care in Pennsylvania is notorious. Healthcare services in Pennsylvania prisons are sub-contracted to for-profit companies, which have an incentive to keep healthcare costs as low as possible. A recent report on privatized healthcare in PADOC prisons by the CLEAR coalition and SEIU Healthcare explains, “[C]ompanies cut costs by creating obstacles to care, hiring too few staff, employing inexperienced staff, and skimping on medication.”⁸⁰

These problems are borne out in our survey. Prisoners are required to pay \$5 for every sick call, a significant expense for a prisoner making prison wages or receiving minimal support, if any, from a family member. One prisoner who has had chronic headaches and respiratory problems reported never making a sick call in his two and a half years at SCI-Fayette because, “they charge too much for sick call and don’t do nothing for symptoms.”⁸¹

Those who do attempt to get care are often dismissed: “I went to medical for an emergency sick call one morning because my vision was so blurry that I could barely see and was harassed and deterred from seeking treatment by the RN,” reports one prisoner.⁸² The cases of cancer mentioned above in which prisoners were denied evaluation until the cancer was life-threatening are further evidence of the dangerous level of neglect exhibited by medical staff.

One of the prisoners with ulcerative colitis was prescribed a regimen of steroids by a doctor outside of the prison, which was repeatedly administered incorrectly by the prison: “The medical department failed to adhere to their instructions and abruptly stopped the medication. This caused a flare up of my ulcerative colitis and I had severe abdominal pains and rectal bleeding again.”⁸³

“Shockingly, nursing staff, and almost with every inmate who is admitted into the infirmary, accuse those inmates of ‘faking it.’”

Many prisoners report that medical staff display hostility toward those seeking care. One prisoner wrote: “Shockingly, nursing staff, and almost with every inmate who is admitted into the infirmary, accuse those inmates of ‘faking it.’ I’ve seen guys literally vomiting, and nursing staff will say, ‘oh he’s just faking it.’ My jaw has dropped open from shock so many times.”⁸⁴ Another prisoner wrote:

I had some sort of seizure one day and I went to medical, when the nurse came in I can see that the nurse was highly upset with my presence and slammed my file down and began to punch the desk. He then began to tell me “Man up” and to tell me I had AIDS from getting fucked in my ass and making fun of me. I don’t have AIDS, he just wanted to make fun of me instead of treating me.”⁸⁵

Darin Hauman wrote to us about the late Greg Yarbonet, who died of brain cancer in 2011⁸⁶:

In his last few weeks of life certain nursing staff deliberately induced dehydration by simply refusing to assist him in drinking water. No hydration by way of intravenously either. With healthy humans it takes a short time being dehydrated for organs to begin shutting down.

Regarding Greg, I would have to sneak into his ward area, I would have to dip my finger into water to moisten his lips as they were “glued” shut, then would have to drip a few drops of water onto his tongue just so he could use a straw to get a few sips of water. Of all things I was yelled at numerous times for doing this. This pisses me off each time I think of this. To deny a man a drink of water speaks volumes as to the ideology of this particular nursing staff.”⁸⁷

Paul Kimble related an exchange with medical staff that underlines the apparent lack of empathy and professional ethics at the prison: “Doctor told me, during last physical, when asked if the lack of treatment meant that I would be left to die, ‘You said it, not me.’”⁸⁸

The only recourse for prisoners in such situations is to engage in a protracted grievance process that is designed to reject prisoner complaints and limit PADOc liability for unlawful conduct. All of the prisoners in the survey who reported filing grievances about medical care or environmental conditions at the prison had their grievances dismissed. This is consistent with official PADOc statistics demonstrating that in recent years more than 98% of prisoner grievances are denied on one basis or another.⁸⁹

SCI Fayette was designed to replace the maximum security state prison in Pittsburgh.⁹⁰ At the time, however, Pennsylvania's prison population was growing rapidly under increasingly harsh sentencing for nonviolent offenders, and SCI Pittsburgh was re-opened shortly after the new prison began operation.⁹¹ State Representative Bill DeWeese, later convicted on corruption charges, pushed hard to bring the new prison to Fayette County, hailing it as an important form of economic development for the poorest county in the state.⁹²

In early 2000, MCC sold 237 acres of its 1,357-acre property to the Commonwealth of Pennsylvania, for the purpose of building SCI Fayette.⁹³ According to the construction manager for the project, the decision to place the prison on top of a mined-out parcel of land with a legacy of coal waste dumping, and an operational coal ash dump nearby was "based on cost, scheduling and availability."⁹⁴ The degree to which coal waste from the earlier Labelle Processing Plant was dumped on this land is unclear. What is clear is that the prison was built on top of a former coal mine, and it is directly adjacent to MCC's coal ash dump.⁹⁵ Indeed, the western slope supporting Slurry Pond 3 looms over the prison, which is significantly lower in elevation, presenting a potential disaster should the dump lose structural integrity.

The prison was built between 2001 and 2003, and at 110 percent of its capacity, currently holds 2,021 prisoners.⁹⁶ The total cost to build was around \$119,000,000.⁹⁷ Prisoners report that parts of the prison are slowly sinking into the ground, likely due to subsidence caused by earlier mining at the site.⁹⁸ As part of the design, it was decided to use boilers that burn coal waste to provide steam and hot water to the prison.⁹⁹ The construction and management of the steam system was contracted out to Fayette Thermal, with the boilers being placed about a quarter mile from the prison.¹⁰⁰ The resulting coal ash from the Fayette Thermal plant is one of several sources that are permitted for disposal on MCC's remaining acreage.¹⁰¹

The related steam and water systems for the prison have broken down several times, according to prisoners, with periods without running water lasting up to a week.¹⁰² In 2010, the pipes for the entire steam and hot water system were dug up and replaced, under a \$7,025,000 contract.¹⁰³ In a testimonial posted to the contractor's website, the Facility Maintenance Manager for SCI Fayette expressed gratitude for "several emergency repairs," which were needed "to keep the poor system we have operating over the last 2+ years."¹⁰⁴ According to the contractor's Technical Proposal, these emergency repairs were on a continuous basis from 2004 to 2010.¹⁰⁵ The new pipes were hung off the sides of the prison buildings, perhaps to avoid corrosion of the pipes caused by coal waste in the surrounding soil.¹⁰⁶

Signs of Pollution at SCI-Fayette

black clouds of debris blowing off the dump site; black dust collecting in the prison yard, on window sills, and on freshly fallen snow; and black and gray dust building up around the vents *inside* prison cells.

A majority of prisoners in the survey reported visible signs of pollution in and around the prison. Almost all of their reports are the same: black clouds of debris blowing off the dump site; black dust collecting in the prison yard, on window sills, and on freshly fallen snow; and black and gray dust building up around the vents *inside* prison cells. These reports match descriptions provided by LaBelle residents of pollution blowing off the site and blanketing the town with black dust. For instance, prisoner Barry Alton reports:

*From our yard we can see the dump trucks going up the road to dump the Fly Ash — Loads not covered — causing dust clouds even prior to dumping. Over the years we'd be outside and dust clouds would blow back towards the prison — couple times covered entire yards. This was not just from dumping but from moving piles of ash around area to level it out.*¹⁰⁷

Joseph Frankenberry writes:

*It seemed always that visible clouds of dust in the outdoor air existed on a daily basis and tables in the yards always had a blanket of dust as inmates would carry tissue to wipe the tables daily to play cards...*¹⁰⁸

Another prisoner writes:

*I went to the eye doctor on Tuesday... The entire windshield of the van was covered in Coal Ash. The officers had to stop the van and wipe the windshield off with paper towels because the Coal Ash would not come off with the windshield fluid and windshield wiper blades.*¹⁰⁹

“There is black dust all over the walls on F, H, G, and E Block. There is always a chemical odor in the air. It is real bad by the staff parking lot next to the yard,” writes one prisoner.¹¹⁰ Another adds that there is “black dust in our cells. You clean it and about an hour later the dust is back. The black dust collects on cloth that inmates cover their vents with[.]”¹¹¹ Another prisoner reports that the “ventilation system is always caked with thick dust.”¹¹²

Prisoners are nearly unanimous in reporting signs of water pollution. They report that the water often smells and tastes of sulfur. Others report that the water is frequently discolored. Michael McCole writes “I put a rag over showerhead and white rag turns to brown...”¹¹³

Marcus Santos explains that the water gave him heartburn every time he drank it. As a consequence, he refrained from drinking water as much as possible. When Marcus arrived at SCI Smithfield he took a tiny sip of water. He waited 5–10 minutes for the onset of heartburn, and when it did not occur, he tried some more

water. When the heartburn failed to materialize, Marcus said he drank and drank and drank. Marcus had been depriving himself of water at SCI Fayette due to the heartburn, and he had lost a considerable amount of weight as well. Marcus said, “When I first got here [to SCI Smithfield] I was thirsty.”¹¹⁴

Several prisoners write about instances when the water was shut off for days at a time, with the most recently reported instance occurring in February 2014.¹¹⁵ One prisoner reports:

*The plumbing or water system here is the worse. The drains back up because of the way they were installed. The pipes trap air and back up... Until yesterday we didn't have no hot water. It was off for almost a week, and the usually cloudy water was brown. It was so bad that it literally made my t-shirt brown while I washed it out.*¹¹⁶

Christian Martinson reports:

*Not only do I have experience with brown, stinking water, but also times where the prisoners had to go on lockdown without working water. Bottled water had to be shipped in and the toilets flushed manually. Then they relocated the water pipes to an elevated level against the walls of the blocks...*¹¹⁷

Another prisoner writes, “2006 to 2012 [underground] pipes kept breaking until above pipes were hung on side of blocks and building.”¹¹⁸ These reports are verified by looking at publicly available contracts for repairs and replacement of the plumbing at SCI Fayette.¹¹⁹

At this time, our investigation has not been able to confirm that the water at SCI Fayette is a source of coal waste or coal ash contamination in the prison. The prison receives water from a local water authority, which has frequently been cited for water quality violations in recent years, likely related to wastes from natural gas drilling in the area.¹²⁰ However, it appears that the water intake for the area is up-river from SCI Fayette and the nearby coal ash dump, and is unlikely to be directly affected by pollution at these sites.¹²¹

It is possible that subsidence, poor construction, and high levels of coal waste in the area contributed to corrosion and breaking of the plumbing system at SCI Fayette, and may have opened the pipes up to leachate from rain and snowmelt draining through the surrounding coal waste and soil.¹²² This could explain why the plumbing system at the prison was in need of constant repair and was ultimately pulled out of the ground and elevated onto the walls of the buildings. Several prisoners also report a connection between rain and snowmelt, and times when the water is particularly discolored and bad smelling.

CRUEL AND UNUSUAL PUNISHMENT UNDER THE U.S. CONSTITUTION

Conditions of Confinement

While “the Constitution does not mandate comfortable prisons,”¹²³ and conditions may be “restrictive and even harsh,”¹²⁴ conditions that are inhumane are impermissible under the Eighth Amendment’s prohibition against cruel and unusual punishment.¹²⁵ When the government deprives an individual of his or her liberty via incarceration it possesses a corresponding duty to provide for that person’s basic human needs, including food, clothing, shelter, medical care, and safety.¹²⁶ However, a prisoner claiming unconstitutional conditions of confinement must prove both an objective and a subjective element, before a court will enforce or protect these rights.¹²⁷

The objective element requires that an injury be “sufficiently serious,”¹²⁸ resulting in the deprivation of a single, identifiable human need such as health, safety, food, warmth or exercise.¹²⁹ A condition that does not meet the objective requirement by itself may be considered in combination with other conditions if these produce a “mutually reinforcing effect” that causes deprivation of a single, identifiable human need.¹³⁰ Being exposed to a substantial risk of harm may state a claim under the Constitution as well, as a prisoner does not “need to await a tragic event” in order to be granted relief from a court, as “the Eighth Amendment protects against future harm.”¹³¹

The subjective element, derived from the principle that “only the unnecessary and wanton infliction of pain implicates the Eighth Amendment,”¹³² requires that a plaintiff demonstrate that a defendant possessed a “sufficiently culpable state of mind.”¹³³ In cases involving prison conditions the culpable state of mind is one of deliberate indifference to prisoner health or safety,¹³⁴ as occurs when a prison official knows that prisoners face “a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”¹³⁵

Under this standard, an injury to a prisoner’s health caused by exposure to environmentally toxic living conditions such as those present at SCI Fayette meets the objective requirement of an Eighth Amendment claim, provided that the harm is “sufficiently serious.” Chronic skin disorders, problems with liver and kidney functioning, asthma attacks and respiratory ailments, and cancer are all sufficiently serious. If the coal refuse and ash pollution surrounding SCI Fayette can be proven to a reasonable scientific certainty to be the cause of an individual’s ill health, the objective requirement of an Eighth Amendment claim for exposure to environmentally toxic living conditions will be met.

If a body of evidence can be developed showing that *any* prisoner at SCI Fayette is being exposed to a substantial risk of serious harm based on the possibility that he will develop a “sufficiently serious” health problem, the state will be constitutionally

prohibited from confining prisoners at SCI Fayette. A class action suit on this scale requires substantial scientific expertise, including studies by epidemiologists and environmental toxicologists. Based on the evidence gathered to date, and the known harmful health effects of coal ash and other coal refuse, there is a sound basis for seeking financial and scientific resources that will enable prisoners and their advocates to develop evidence of the potential and actual harms imposed on them.

The subjective element of an Eighth Amendment claim requires proof that officials had knowledge of the risks to prisoners' health at SCI Fayette, and yet failed to take reasonable measures to eliminate those risks. PADOE officials' awareness that SCI Fayette was built on and around a toxic dump would demonstrate actual knowledge of a risk of adverse health consequences from imprisoning people at the site.

Aggregated medical records may also show patterns of health problems consistent with exposure to environmentally toxic living conditions, establishing that PADOE officials knew or should have known that prisoners were being harmed by these toxins. Additionally, prisoner grievances and reports such as this one will also create a record of actual knowledge of the harms imposed upon prisoners at SCI Fayette.

At this stage it is uncertain what, if any, measures have been taken by PADOE officials to mitigate the existing harms at SCI Fayette, but it does not appear that any measures have been taken to identify or address the problem. If the harms are of such a magnitude that prisoners cannot be held at SCI Fayette without imposing a substantial risk of serious harm, any measure short of closing the prison will be unreasonable. Thus, if prison officials fail to take any actions to remedy the harms imposed on a prisoner or a group of prisoners, or fail to take those actions that are necessary to end them, such as closing the prison, the subjective element of an Eighth Amendment claim will be met.

Medical Care

The U.S. Supreme Court has held that the Eighth Amendment is based on "broad and idealistic concepts of dignity, civilized standards, humanity, and decency,"¹³⁶ that consequently forbids punishments that "involve the unnecessary and wanton infliction of pain."¹³⁷ These premises "establish the government's obligation to provide medical care for those whom it is punishing by incarceration," since a prisoner "must rely on prison authorities to treat his medical needs," and failure to do so "may actually produce physical torture or a lingering death."¹³⁸

In order to prevail on a claim of unconstitutional medical or mental health care, plaintiffs must prove that prison officials acted with "[d]eliberate indifference to serious medical needs of prisoners," causing "unnecessary and wanton infliction of pain."¹³⁹ The Court recognized that medical and non-medical staff may be liable under this cause of action, and that deliberate indifference may result from denial or delay of a prisoner's medical care, or intentional interference with prescribed treatment.¹⁴⁰ Deliberate indifference requires a higher standard of subjective intent than negligence, as "an inadvertent failure to provide adequate medical care cannot

be said to constitute an unnecessary and wanton infliction of pain[.]”¹⁴¹ The Third Circuit Court of Appeals has elaborated on this standard by observing that deliberate indifference is found when a doctor intentionally inflicts pain on a prisoner, when reasonable requests for medical treatment are denied causing “undue suffering or the threat of tangible residual injury,” and “where knowledge of the need for medical care is accompanied by the intentional refusal to provide that care.”¹⁴²

Those prisoners suffering health problems as a consequence of their exposure to environmentally toxic living conditions are entitled to medical care. If prison officials act with deliberate indifference to a prisoner’s serious medical need at SCI Fayette by denying or delaying necessary treatment, or by intentionally inflicting harm, those officials are liable under the Eighth Amendment. If it can be proven that medical staff and prison officials are aware that a prisoner’s illness is caused or exacerbated by his exposure to environmentally toxic conditions at SCI Fayette, failure to transfer the prisoner to another prison for medical reasons would constitute either denial of necessary treatment or intentional infliction of pain, or both.

CONCLUSIONS AND NEXT STEPS

As previously mentioned, the inherent limitations of the survey make it impossible to empirically show that prisoners at SCI-Fayette are getting sick at an unusually high rate or that these illnesses are caused by pollution from the dump. However, we believe that the patterns that emerged in our survey are alarming and suggest a causal relationship between coal waste and prisoner health problems. The prevalence of respiratory problems is particularly telling because they are the most common symptoms associated with exposure to airborne toxins. There is also a consistent pattern of prisoners developing symptoms that they never before experienced shortly after entering SCI-Fayette, another telltale sign of exposure environmental toxins.

Prisoners retain constitutional and human rights to clean air and clean water.

At this stage, it is clear that the investigation into how prisoner’s health is being harmed by exposure to toxic coal refuse must continue and expand. Prisoners retain constitutional and human rights to clean air and clean water. We will conclude with a concise list of how

individuals and organizations representing different constituencies can come together to address the urgent health crisis at SCI Fayette and the town of LaBelle.

Prisoners, their family members and supporters: Prisoners at SCI Fayette should continue to provide detailed information regarding health symptoms experienced at SCI Fayette, efforts to obtain medical treatment, and evidence of pollution at the prison. For those no longer at SCI Fayette, please provide information of ongoing health problems that arose while at SCI Fayette, as well as how your health may have improved since leaving the prison. Family members and supporters of prisoners can help by contacting the Human Rights Coalition to become involved in advocacy and organizing efforts in support of the health and human rights of prisoners at SCI Fayette and throughout the PADO.

LaBelle residents, prison staff, and surrounding communities:

This report focuses primarily on the health conditions and treatment of prisoners at SCI Fayette, but the residents of LaBelle and prison staff are also exposed to pollutants from this site, and are reporting high rates of respiratory problems and cancer. Those who live and work in the area around the dump have a right to a clean environment, and have a common cause with those who are locked up at SCI Fayette. We know from our investigation that residents of LaBelle are fighting for the dump to be closed and for compensation for harms done to them. We would like to work in solidarity with residents and form strategies for protecting the health, safety, and human rights of all people living and working near this dump.

Environmental Organizations: Several environmental organizations have been supporting residents of LaBelle and advocating for tighter regulations or even closure of the site. We call on these and other groups to include prisoners in their understanding of who is impacted by this dump and to see the strategic importance of linking the grievances of everyone impacted by the site. More broadly we call on environmental groups to see prisoners everywhere as Environmental Justice (EJ) Communities. EJ communities are low-income communities and communities of color which are more likely to be targeted by polluting industries because of institutional forms of oppression and a lack of political and economic power.

The situation in LaBelle and SCI Fayette also highlights the need for more forceful federal regulation of coal ash, which has been a major focus of environmental NGOs for years. The inhumane situation of people held captive in close proximity to this dump provides a unique opportunity to prove a direct relationship between exposure to coal ash and adverse health impacts. The results of the kind of epidemiological studies we hope to undertake could bolster the demands of these national groups for coal ash to be strictly regulated by the EPA.

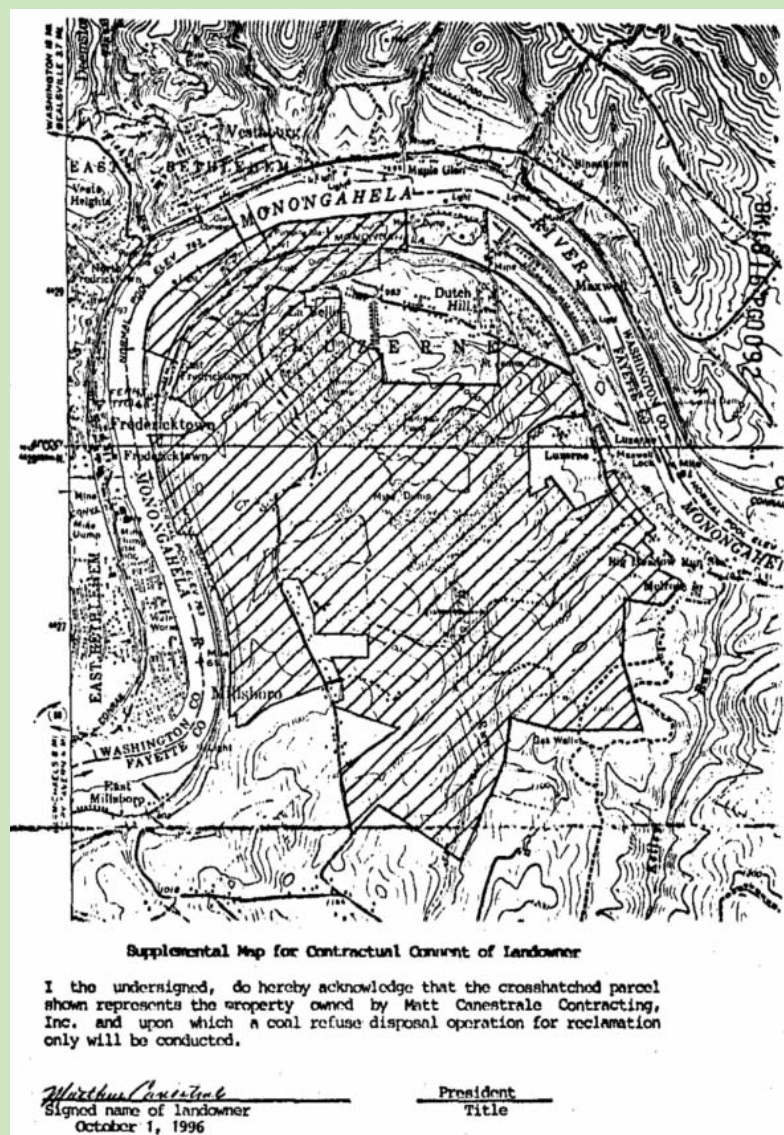
Medical Institutions and Organizations: Medical professionals are needed to advocate for and carry out epidemiological studies of the prisoner population at SCI Fayette and the town of LaBelle. Professional organizations should issue statements of support and assist in mobilizing professional and financial resources for investigative, advocacy, and legal efforts.

Legal Community: Lawyers, law clinics, law students, paralegals, and jailhouse lawyers should join with the ALC to assist in investigation and potential legal action in support of prisoners at SCI Fayette. Additionally, those prisoners in urgent need of medical care, especially diagnostic treatment and surgery to assess pre-cancerous and cancerous growths, need legal support. A lawyers' monitoring committee should be established in order to organize a network of attorneys to do pro bono work on individual cases that require immediate attention.

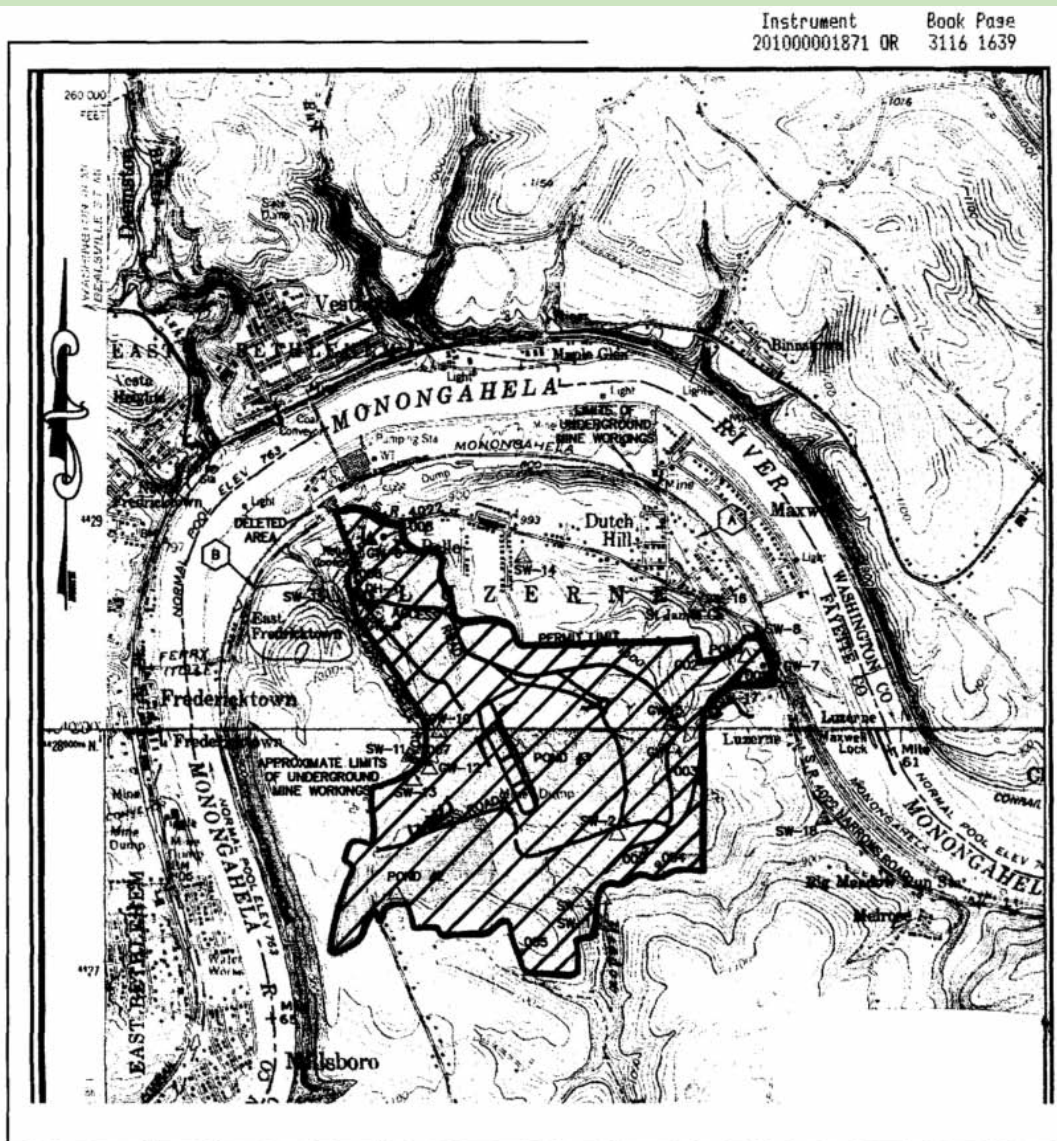
Principled and Strategic Cooperation: All of the above constituencies must work together in an integrated way that prioritizes the health and the rights of prisoners, who are the most impacted and the most vulnerable.

NOTES

- 1 Letter from prisoner (Feb. 5, 2014) (on file).
- 2 *Citizens Coal Council v. Matt Canestrone Contracting, Inc.* [CCC v. MCC], Complaint ¶ 1, Civil Action No. 13-896 (2013).
- 3 Response to Public Comments re: MCC Operating Permit SOOP-26-00057, Bureau of Air Quality, PA DEP to Abolitionist Law Center (Jun. 11, 2014) (on file).
- 4 David Templeton, *A Past, But No Future: Suspension Bridge Coming Down*, PITTSBURGH POST-GAZETTE, February 29, 2014, at <http://www.post-gazette.com/local/washington/2004/02/29/A-past-but-no-future-Suspension-bridge-coming-down/stories/200402290145>.
- 5 *Id.*
- 6 Dennis Noll, *FGD as an Alkaline Amendment for Coal Waste*, in PROCEEDINGS OF FLUE GAS DESULFURIZATION (FGD) B-PRODUCTS AT COAL MINES AND RESPONSES TO THE NATIONAL ACADEMY OF SCIENCES FINAL REPORT "MANAGING COAL COMBUSTION RESIDUES IN MINES": A TECHNICAL INTERACTIVE FORUM 33, 33 (Kimery C. Vories & Anna K. Harrington eds., 2006).
- 7 Fayette County, Pennsylvania, Deed Book 1693: 222; Estate of Interstate Thermal Energy Conversion Corporation & Matt Canestrone Contracting, Inc., 3 May 1996; Recorder of Deeds, Uniontown, PA; Fayette County, Pennsylvania, Deed Book 1733: 227; Estate of Labelle Processing Company & Matt Canestrone Contracting, Inc., 12 July 1996; Recorder of Deeds, Uniontown, PA.
- 8 Fayette County, Pennsylvania, Deed Book 1816: 91; Contractual Consent of Landowner, Matt Canestrone Contracting, Inc., 1 October 1996; Recorder of Deeds, Uniontown, PA.



- 9 Fayette County, Pennsylvania, Deed Book 3116: 1637; Contractual Consent of Landowner for a General Permit, Matt Canestrale Contracting, Inc., 3 March 2010; Recorder of Deeds, Uniontown, PA. [Labelle Refuse Site set at 506.7 acres].



The cross-hatched area, located in Luzerne Township, Fayette County, Pennsylvania is the area referred to in this Contractual Consent of Landowner Form.

Matt Canestrale Contracting, Inc.
Landowner

TAX MAP #19-02-0013

Matt Canestrale

Matt Canestrale

Lorraine Canestrale

Lorraine Canestrale

- 10 Fayette County, Pennsylvania, Deed Book 2476: 314; Matt Canestrone Contracting, Inc. & Commonwealth of Pennsylvania, Department of General Services, 9 February 2000; Recorder of Deeds, Uniontown, PA. [Transfer of 237.82 acres].



- 11 *Supra* note 6 at 33-35.
12 *Id.*
13 *Id.*
14 BARBARA GOTTLIEB ET AL., COAL ASH: THE TOXIC THREAT TO OUR HEALTH AND ENVIRONMENT: A REPORT FROM PHYSICIANS FOR SOCIAL RESPONSIBILITY AND EARTHJUSTICE 9 (2010).
15 Center for Coalfield Justice, Comments Regarding CMAP #26970702 and NPDES #PA-0215112 for Matt Canestrone Contracting, Inc. Labelle Site, Luzerne Township, Fayette County, ¶¶ 14-45 (Apr. 19, 2013).
16 25 Pa. Code § 123.2; 25 Pa. Code § 123.1(a)(9)
17 Interviews with residents and prisoners.
18 *Supra* note 15 at ¶¶ 18-23.
19 Citizens Coal Council, Notice of Violations and Notice of Intent to Sue Matt Canestrone Contracting, Inc., 5-12 (Mar. 13, 2013); EVAN HANSEN ET AL., WATER POLLUTION AT LABELLE, FAYETTE COUNTY, PENNSYLVANIA (2014).
20 EVAN HANSEN ET AL., WATER POLLUTION AT LABELLE, FAYETTE COUNTY, PENNSYLVANIA (2014).
21 *Id.*
22 *Id.* at 19-21.
23 ALAN H. LOCKWOOD & LISA EVANS, ASH IN LUNGS: HOW BREATHING COAL ASH IS HAZARDOUS TO YOUR HEALTH 14 (2014).
24 Citizens Coal Council, Notice of Violations and Notice of Intent to Sue Matt Canestrone Contracting, Inc., 13 (Mar. 13, 2013).
25 David Templeton & Don Hopey, *Large Loads in LaBelle*, PITTSBURGH POST-GAZETTE, December 16, 2010, at <http://www.post-gazette.com/news/health/2010/12/16/Large-loads-in-La-Belle/stories/201012160387>.
26 David Templeton & Don Hopey, *"Clusters" of Death*, PITTSBURGH POST-GAZETTE, December 13, 2010, at <http://www.post-gazette.com/news/health/2010/12/13/Clusters-of-death/stories/201012130261>.
27 *Supra* note 25.
28 Notice of Operating Permit Disposition for SOOP-26-00057, Bureau of Air Quality, PA DEP to Abolitionist Law Center (Jul. 14, 2014) (on file).

- 29 Don Hopey, *FirstEnergy to Ship Little Blue Run Coal Waste to Fayette County*, PITTSBURGH POST-GAZETTE, January 25, 2013, at <http://www.post-gazette.com/local/west/2013/01/25/FirstEnergy-to-ship-Little-Blue-Run-coal-wastes-to-Fayette-County/stories/201301250140>; Press Release, FirstEnergy Corp., FirstEnergy Announces Plans to Beneficially Use Scrubber Material from Bruce Mansfield Plant in Pennsylvania Mine Reclamation Project (Jan. 22, 2013) (available at: https://www.firstenergycorp.com/content/fecorp/newsroom/news_releases/firstenergy-announces-plans-to-beneficially-use-scrubber-materia.html).
- 30 *Id.*
- 31 US Army Corps of Engineers, Pittsburgh District, Public Notice No. 2014-405 (2014), <http://www.lrp.usace.army.mil/Portals/72/docs/regulatory/2014%20Public%20Notices/PN%2014-27.pdf>.
- 32 Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act, 26-00500C: Alpha PA Coal Terminal, LLC, 44 Pa.B 791, 806 (February 8, 2014); Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act, 26-00500C, 44 Pa.B 2519, 2526 (April 26, 2014).
- 33 Timothy Puko, *Alpha Natural Resources to Pay Record \$227.5M in Water Pollution Settlement*, TRIBLIVE, March 6, 2014, at <http://triblive.com/business/headlines/5710782-74/alpha-coal-federal>.
- 34 BARBARA GOTTLIEB ET AL., COAL ASH: THE TOXIC THREAT TO OUR HEALTH AND ENVIRONMENT: A REPORT FROM PHYSICIANS FOR SOCIAL RESPONSIBILITY AND EARTHJUSTICE 8 (2010); Physicians for Social Responsibility, *840 Health Professionals Agree: Coal Ash is Hazardous to Your Health*, Apr. 26, 2012, <http://www.psr.org/news-events/press-releases/840-health-professionals-agree-coal-ash-hazardous-your-health.html>.
- 35 BARBARA GOTTLIEB ET AL., COAL ASH: THE TOXIC THREAT TO OUR HEALTH AND ENVIRONMENT: A REPORT FROM PHYSICIANS FOR SOCIAL RESPONSIBILITY AND EARTHJUSTICE 1-5 (2010).
- 36 *Id.* at vii.
- 37 Coal Combustion Residuals — Proposed Rule, 75 Fed. Reg. 35,128 (Proposed Jun. 21, 2010).
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EXHIBIT B

**Emily Atkin, 40 Million Tons of Toxic Coal Waste Sit Next to Prison
with ‘Alarming Rates of Illness’**

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40 Million Tons Of Toxic Coal Waste Sit Next To Prison With 'Alarming Rates Of Illness'

BY [EMILY ATKIN](#) POSTED ON SEPTEMBER 5, 2014 AT 1:24 PM

CREDIT: SHUTTERSTOCK

Soon after Marcus Santos became a prisoner at the Pennsylvania State Correctional Institution (SCI) in Fayette, he says he began feeling sick. He developed a rash on his left side with large welts. He became dizzy, nauseous, and experienced shortness of breath.

His face and throat would swell, making it difficult to breathe. At night, the symptoms were the worst.

"I suffered almost everyday of the 15 months I was at that prison," he said. "It became clear to me that I [was] being left for dead."

Eventually, a doctor outside the prison recommended Santos be transferred to another prison, and he was — to the SCI in Smithfield, more than 300 miles away. Since then, Santos' symptoms have "subsided substantially or completely," according to the public interest law firm who interviewed him.

That interview is part of a report released by the law firm this week detailing "alarming rates of illness" at SCI Fayette. The Abolitionist Law Center's report, based on a year-long investigation, drew a link between those rates of illness and the prisoners' proximity to large amounts coal ash, a toxic waste byproduct of burning coal.

According to the ALC, which works to end mass incarceration of minorities and poor people, SCI Fayette is "inescapably situated in the midst of a massive toxic waste dump." The facility is located within 500 feet of a 500-acre coal refuse disposal site, which contains about 40 million tons of waste, including two coal slurry ponds and millions of cubic yards of coal ash piled high on top of the coal refuse, the report said. Coal ash ponds contain lead, arsenic and mercury.

Likely because of their exposure to pollutants from the site, the report said a large majority of the incarcerated people interviewed — 81 percent — are experiencing respiratory and throat conditions, ranging anywhere from general sinus problems to sores, cysts, and tumors in the nose, mouth, and throat. Sixty-eight percent of prisoners interviewed are experiencing gastrointestinal problems, the report said, and 52 percent have reported skin conditions like rashes and cysts. Twelve percent of prisoners interviewed said they have issues with their thyroid gland.

The percentages are preliminary, as they are only based on those prisoners who responded to ALC's questionnaires. Only 75 prisoners were interviewed out of the maximum security prison's current population of 1,986 inmates. The report noted that eleven prisoners have died from cancer at SCI Fayette between 2010 and 2013, and that another six prisoners have being diagnosed while at SCI Fayette, though it is not clear whether those cases were directly caused by coal ash pollution.

"There needs to be an independent and comprehensive study of the health of people at the prison and in the surrounding community," Bret Grote, an author of the report, told

Reuters.

If it is indeed found that prisoners at SCI Fayette are inescapably enclosed in a place that's harmful to their health, the ALC report noted that the prison may be unconstitutional in its location, and should be shut down. The Eighth Amendment states that prisons are not allowed to impose conditions of incarceration that deprive prisoners of their basic human needs, which the ALC argues include clean air.

"Situating a prison in the midst of a massive toxic coal waste dump may be impermissible under the Constitution if it is shown that prisoners face a substantial risk of serious harm caused by exposure to pollutants from the dump," the report states. "Prisoners at SCI Fayette need environmental justice: access to clean air and water, prompt diagnostic care, required surgical treatment, and all other necessary medical care."

State Department of Corrections spokeswoman Susan McNaughton told the Pittsburgh Post-Gazette that the department would review its findings. "We take these matters seriously," she said.

Coal ash is the second-largest form of waste generated in the United States. The main way America currently stores the polluted byproduct of coal-fired power production is in man-made "ponds" — big, black, sludgy, lakes of arsenic, lead, and mercury. It's not known exactly how many of these ponds exist throughout the United States, though the EPA estimates there are around 600, storing coal ash for potential reuse in concrete, cement, or drywall, or for nothing at all.

Ash ponds have a history of leaching concentrated toxins into rivers, groundwater, and soil. Pollution from the ponds can harm human health, according to Physicians for Social Responsibility, which states that coal ash toxics "have the potential to injure all of the major organ systems, damage physical health and development, and even contribute to mortality." However, the U.S. Environmental Protection Agency (EPA) does not currently classify coal ash as a hazardous waste.

As for the prisoners, the ALC acknowledges that their report is only preliminary, and that more research needs to be done "to better understand both the risks posed by the dump and the nature of prisoners' health problems."

"Nonetheless, these preliminary findings raise legal questions about the location of the prison," the center said in a statement. "If the patterns of illnesses we're seeing at SCI-Fayette are indeed related to pollution from the dump, then this prison should be shut down."

EXHIBIT C

Christine Haines, *Environmental Issues Concern Corrections Officers*



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Pictured in this 2008 file photo is SCI Fayette located in Luzerne Township near a site using coal ash for mining reclamation.



Posted: Monday, February 9, 2015 2:45 am | Updated: 5:55 pm, Wed Feb 11, 2015.

By Christine Haines
| 0 comments

If there are health problems associated with environmental issues at SCI-Fayette in Luzerne Township, staff members at the prison are exposed nearly as much as the inmates.

Questions have been raised about the safety of both the air and the water at the prison, given the proximity of the fly ash dump in LaBelle operated by Matt Canestrale Contracting and years of water quality reports from the Tri-County Joint Municipal Authority indicating high levels of trihalomethanes, a known carcinogen.

The fly ash could also cause medical problems, according to Dr. Michael McCawley, the interim chair of the Department of Occupational and Environmental Sciences at West Virginia University.

"It's coal that has been burned and it's what's left that will not burn. You can have heavy metals and you can have some unusual compounds," McCawley said. "When people handle fly ash, they should have protection on."

McCawley said the surrounding area can be affected, depending on air currents.

"It can have tar-like substances coating the particles. It can have cadmium, lead, arsenic — people handling it can develop cancers," McCawley said.

While respiratory issues, including lung cancer are most common, McCawley said other cancers, such as liver, kidney and thyroid, can also develop.

"Once you breathe a carcinogen, it can go anywhere in your body. Fly ash can be pretty toxic stuff," McCawley said.

The Herald-Standard has sought medical information for staff members at SCI-Fayette in its Open Records request. Even though the state's Office of Open Records declared all of the documents sought by the Herald-Standard regarding the number and types of illnesses diagnosed among inmates at SCI-Fayette and



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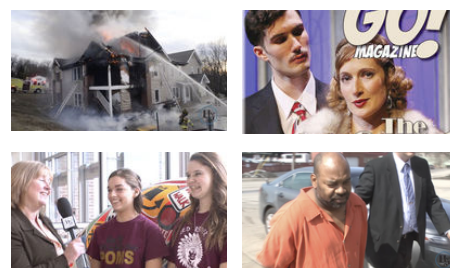
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similar information for staff members to be public records, to date none of the requested information has been released and the Department of Corrections is now saying they don't exist. Some medical information relating to inmate illnesses treated at SCI-Fayette was released, but Chase Defelice, assistant counsel with the office of General Counsel for the Pennsylvania Department of Corrections, said no information was available for the staff and even if it were, the union would object to its release.

David LaTorre, spokesman for the Pennsylvania State Corrections Officers, said the release of medical information would be welcomed by the union.

"PSCOA wouldn't have any objections to the public release of such information as long as personal information was not released. In fact, we would like to review the information ourselves," said La Torre in an

email to the Herald-Standard.

La Torre said the union has been attempting to look into the health issues at the prison itself.

"PSCOA has provided health surveys to current and former members of SCI-Fayette. To date, we have not received any replies, but in the interest of our members' health we are continuing to monitor the situation," La Torre stated.

When the Department of Corrections was informed that the PSCOA had no objection to medical information about the staff being released as long as it didn't contain identifying information, existence of the previously requested information was again denied.

"We do not have any aggregated information for employee medical records," wrote Susan McNaughton, the media relations director for the Department of Corrections.

When the request was initially made, the DOC never said the documents didn't exist, but instead argued that they were not public documents. Those arguments were overturned by the Pennsylvania Office of Open Records, which ordered the documents released. Erik Arneson, who served briefly in January as Pennsylvania's Open Records officer, said the nonexistence should have been part of the initial argument made by the Department of Corrections.

"It's an odd situation because they did not rely on that in the appeals process," Arneson said.

Eric Garland, a corrections officer at SCI-Fayette since 2004, said the health survey made available by the union was a long, confusing document that appeared to require notarization.

"That was a pretty poor survey they had. It was just to make it appear they had done something," Garland said. "They spoke about it at an obscure union meeting and hardly anyone knew about it."

The survey was available online on the PSCOA website, but Garland said few people knew to look there.

"Retirees wouldn't have had a clue. I had several people come up to me weeks after the deadline to return the survey asking how to find it," Garland said.

The survey is a 12-page documents asking for complete identification, including social security number, and residential and employment history for the past 15 years, as well as medical information for the individual filling out the survey and their family members. Included is a release, that is to be signed and witnessed, stating that the respondent is giving permission for the release of the confidential information.

"They don't tell you what to do with it once you complete it, and they want it notarized," Garland said.

After repeated calls to the law firm Freeburn Hamilton, which prepared the health questionnaire, the law firm referred to matter to LaTorre.

LaTorre said the survey needed to be as thorough as it is in order to be effective if the union members ever file a class action suit against the state.

"The questionnaire is actually designed to reduce the demands on potential plaintiffs by obtaining their background information in an efficient, proactive and organized manner as opposed to repeatedly contacting them for necessary information in a piecemeal fashion," LaTorre said in an email. "Moreover, litigation is by its nature very demanding on parties. This questionnaire is just the beginning of all of all of the demands that would be placed on them through the litigation process.

"All of this information is required as part of the pre-litigation investigation. If it is determined that a valid basis for a lawsuit exists, defense counsel would ask for more information during discovery. All of the plaintiff's health and employment records would be subpoenaed. They would be subjected to lengthy depositions, and then they would be aggressively examined during trial. It is better to be prepared, and a thorough, comprehensive questionnaire at the outset is a much more efficient and organized way to start the process, and should ultimately reduce the demands on the plaintiffs," LaTorre stated.

Garland, who was diagnosed with hypothyroiditis, low thyroid condition, in 2009, believes the illness may be related to environmental issues in area of the prison. Garland said he feels at times that he is fighting the union as much as the Department of Corrections when it comes to his illness.

"My union has suggested to me that I'm bound by the Pennsylvania Department of Corrections Code of Ethics and could be disciplined for talking to the media without clearing it with Sue McNaughton, the public relations director for the Department of Corrections," Garland said.

Garland said he had filed a grievance with the union in 2011 or 2012 mentioning his thyroid problems in connection with conditions at the prison.

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"I checked on the status, and it was like it didn't even exist," Garland said.

Retired SCI-Fayette Corrections officer John Yanik didn't have an opportunity to file a grievance over his diagnosis or to complete the survey. He's been off work since December 2010 following an injury, then retired. He was diagnosed with kidney cancer in February 2011. That tumor was removed, but he had a recurrence in 2013 and was diagnosed with thyroid cancer in 2014. He believes his illnesses are directly related to the water and air at the prison, where he had worked since just after it opened. He speaks openly about the issues there.

"You can't fire a retiree and you can't take my pension away," Yanik said.

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EXHIBIT D

**Don Hopey, Groups Say Fly Ash near State Prison in Fayette County
Causing Health Problems**



Groups say fly ash near state prison in Fayette County causing health problems

September 2, 2014 12:04 AM

By Don Hopey / Pittsburgh Post-Gazette

A report released today raises concerns about inmate cancers and other serious health ailments at a state prison that sits next to a massive Fayette County coal waste dump full of toxic fly ash.

The preliminary report on the ongoing investigation by two human rights organizations into prisoner health at the State Correctional Institution Fayette in LaBelle, found 11 prisoners died from cancer between January 2010 and December 2013, another six have been diagnosed with cancer and eight more have undiagnosed tumors or lumps.

Also, more than 80 percent of 75 prisoners responding to the investigators experienced respiratory problems, 68 percent said they experienced gastrointestinal problems and half have skin rashes, cysts and abscesses. Twelve percent, nine of the 75, reported being diagnosed with a thyroid disorder at the prison or having their existing thyroid problems get worse. Many of the prisoners have multiple, overlapping symptoms, the report said.

The 28-page report, titled “[No Escape: Exposure to Toxic Coal Waste at State Correctional Institution Fayette](#),” was released today by the Abolitionist Law Center and the Human Rights Coalition. It is based on a year-long review of prison medical and mortality records, interviews with prisoners, former inmates and residents of LaBelle, and correspondence from more than 40 inmates.

“The number of cancer deaths, reported cancers and undiagnosed tumors raise an alarm. Those and the other illnesses show a need for a more thorough and systematic study of this situation,” said Bret Grote, legal director for the Abolitionist Law Center and one of the authors of the [report](#).

To print the document, click the "Original Document" link to open the original

PDF. At this time it is not possible to print the document with annotations.

Mr. Grote said the inmate mortality rate at the Fayette prison is higher than that at all but two other state prisons: Graterford, Montgomery County, where more than 700 of the 4,000 prisoners are older inmates serving life terms; and Laurel Highlands, Somerset County, which serves as a nursing home for older, chronically ill inmates.

Susan McNaughton, a state Department of Corrections spokeswoman, said Sunday that once the report is released the department would review its findings and the issues and concerns it raises, adding, "We take these matters seriously."

Dave La Torre, a spokesman for the Pennsylvania State Corrections Officers Association, also declined to comment on the report but expressed concern for the union's members.

"We are aware of some officers from SCI Fayette who are suffering from illness," Mr. La Torre said. "We look forward to reviewing this report to see if there is any connection."

"It's scary," Ann Schwartzman, executive director of the Pennsylvania Prison Society, an advocacy organization for state prison inmates, said. "If it's true, the state needs to take immediate action. Inmates receive their punishment through sentencing and shouldn't be further punished by unhealthy conditions in prison."

She said the organization's volunteer prison visitors have been aware of the inmate health concerns

for several years.

The 2,000 bed, \$125 million maximum security prison where all of the state's vehicle license plates are made, opened in 2003. It was built on part of the old strip mine site that has been used for coal combustion waste disposal for 60 years and has been owned since 1997 by Matt Canestrone Construction Inc.

The combustion waste at the 506-acre Canestrone site, which borders the prison on two sides, includes 40 million tons of coal mining waste rock, two coal slurry ponds and millions of cubic yards of fly ash from FirstEnergy Corp.'s Mitchell and Hatfield's Ferry coal-burning power plants in Washington and Greene counties. The plants were closed by the company in October 2013.

The Canestrone site is not accepting shipments of fly ash at this time, according to John Poister, a state Department of Environmental Protection spokesman. It does have the required state permits that allow it to do so and is in compliance with those permits, he said.

But FirstEnergy has asked the state for permission to ship 3.5 million tons of coal ash from its Bruce Mansfield plant in Beaver County by barge 90 miles up the Ohio and Monongahela rivers to the Canestrone waste site. That is under review by the DEP, Mr. Poister said.

Many of the prisoners surveyed for the report noted similar, visible signs of pollution that include "black clouds of debris blowing off the dump site; black dust collecting in the prison yard, on window sills and freshly fallen snow; and black and gray dust building up around the vents inside prison cells."

The fly ash is a fine particle material with the consistency of talcum powder and containing sometimes high levels of carcinogenic heavy metals, including arsenic, lead and mercury. Those tiny airborne particles can be breathed deeply into the lungs and be transported in the blood to other organs, and peer-reviewed health studies have linked the fine particles to the four leading causes of death in the U.S. — heart disease, cancer, respiratory disease and stroke.

A 2006 report from the National Academy of Sciences found 24 potentially hazardous metals in coal ash.

And in 2010, an analysis of fly ash from the Canestrone site reported in the Pittsburgh Post-Gazette investigative series, "Mapping Mortality," found it contained concentrated levels of arsenic, barium, chromium, lead and mercury. Many of those same toxics also were present in dust samples taken from window sills, garages and an apple tree in the community of LaBelle, Luzerne Township, where between 2000 and 2008 residents died of respiratory diseases and heart disease at rates 20

percent and 25 percent above the national average.

“Human beings should not have to live in a toxic waste dump just because they’ve been convicted of a crime,” Mr. Grote said. “Building this prison in a coal refuse site shows a disregard for prisoners and staff, and further investigation is needed about how the prison was permitted and sited where it was.”

Unlike reports of health problems at other state prisons, the new report found that most of the symptoms and health problems experienced by prisoners at the Fayette facility emerged after they arrived at the prison.

“Our investigation leads us to believe that the declining health of prisoners at SCI Fayette is indeed caused by the toxic environment surrounding the prison,” the report said, but adds that a more in-depth investigation is needed to prove the link between prisoner health problems and the airborne pollution coming off the coal ash site.

The report also raised constitutional questions about the siting of the prison and the confinement of prisoners next to the coal ash disposal site, a situation it terms a “growing injustice.”

“Health is a human right,” the report states, “and if the patterns that have emerged during our investigation are indicative of the harms and risks that accompany confinement at SCI Fayette, then it is imperative that the prison is shut down.”

EXHIBIT E

David DeKok, *Report Blames Coal Ash for Cancers at Pennsylvania Prison*

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Report blames coal ash for cancers at Pennsylvania prison

Tue, Sep 2 2014

By David DeKok

HARRISBURG Pa. (Reuters) - A high rate of cancer among inmates at a southwestern Pennsylvania prison is linked to a nearby coal ash dump, and the correctional facility should be closed down, according to a report made public on Tuesday. Eleven prisoners died of cancer from 2010 through 2013, and six others have been diagnosed with cancer at the State Correctional Institution Fayette, said the report, released by the Abolitionist Law Center, a public interest law firm based in Pittsburgh, and the Human Rights Coalition, a national prison reform group.

SCI Fayette has a higher inmate death rate than all but two other prisons in the state, both of which have high geriatric populations, it said.

A 12-month investigation found that blowing coal ash was the most likely cause of the inmate cancers as well as other illnesses at the facility.

Inmates quoted in the report described black dust blowing from the dump and settling onto the prison and its grounds.

The report calls for SCI Fayette, which houses 1,986 inmates and has 677 staff, to be shut down. The medium security facility was built for \$119 million and opened in 2003. All of the state's license plates are made there.

Coal ash, also known as fly ash, is the residue of burning coal in a power plant. It was used extensively in Pennsylvania in the 1960s and 1970s in mine reclamation projects, notably in the effort to control a mine fire under the town of Centralia.

Its carcinogenic components, including lead, arsenic and mercury, were revealed in a 2010 report by a public interest group, Physicians for Social Responsibility.

"There is a strong correlation between confinement at SCI Fayette and the onset of serious health symptoms," said Bret Grote, an author of the prison report. "There needs to be an independent and comprehensive study of the health of people at the prison and in the surrounding community."

Officials at the state Department of Corrections are reviewing the report, a spokeswoman said.

"We take the health of our inmates and staff seriously," said the spokeswoman, Susan McNaughton.

David LaTorre, a spokesman for the Pennsylvania State Correctional Officers Association, said it too would review the report carefully.

"We are aware of some officers from SCI Fayette who are suffering from illness," he said.

Fly ash from two regional power plants was dumped at the Fayette County site for 60 years, said John Poister, a spokesman for the state Department of Environmental Protection.

No one answered the telephone at Matt Canestrone Construction Inc in Elizabeth, which owns the dump site.

(Editing by [Ellen Wulforst](#) and Steve Orlofsky)

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EXHIBIT F

**Christine Haines, *Herald-Standard* Continues Battle for Prison
Cancer Information**

Herald-Standard continues battle for prison cancer information

By Christine Haines chaines@heraldstandard.com | Posted: Sunday, January 11, 2015 2:30 am

The Herald-Standard is continuing to pursue records related to illnesses at SCI-Fayette ordered by the Office of Open Records to be released by the Pennsylvania Department of Corrections but still not produced.

The initial request was made in September after the Abolitionist Law Center released a report indicating that the proximity of SCI-Fayette to a coal ash dump was causing health problems for inmates.

Dustin McDaniel, the executive director of the Abolitionist Law Center in Pittsburgh, said it appears from the information released by the DOC that the department didn't actually review the situation to address potential medical problems.

"It appears their purpose was just to refute the allegations. It wasn't about whether people are getting ill," McDaniel said. "If you were to do an epidemiology study of the site, you would include the whole population, the staff as well as the inmates, and the residents of LaBelle as well."

Two retired prison guards reported contracting kidney cancer that they said may be attributed to the drinking water at the prison having high levels of trihalomethanes, a carcinogen created when organic matter mixes with the chlorine used to treat drinking water. A number of LaBelle residents have reported various kidney, cancer and breathing problems.

In order to rule out medical cases that may have existed prior to an inmate's incarceration at SCI-Fayette and to keep track of those that may have been transferred out, the Herald-Standard requested information on illnesses diagnosed at the prison



SCI-Fayette

Roberto M. Esquivel|Herald-Standard
Pictured in this 2008 file photo is SCI-Fayette located in Luzerne Township.

since its opening in August 2003. The Department of Corrections Open Records Officer Andrew Filkosky responded, asking for an additional 30 days to review whether the requested records were public under the Right to Know Law. A few weeks later Filkosky responded that the documents were not public for a variety of reasons, including issues of safety.

The case was appealed to the Office of Open Records which ruled Dec. 1 that the records were public and needed to be provided within 30 days. On Dec. 31 the Department of Corrections released information on cancer, respiratory and gastrointestinal cases treated at SCI-Fayette as well as at the other prisons in the state system since 2010, showing SCI-Fayette to fall near the center in incidence rates for all three ailments. It did not provide information prior to 2010, nor did it provide information on where the illnesses were diagnosed.

The Herald-Standard raised objections with the Department of Corrections on Dec. 31 that the Office of Open Records order had not been followed, and assurances were given by attorney Chase Defelice, assistant counsel for the Department of Corrections, that more information would be provided, if it existed.

On Jan. 7, the Herald-Standard received the sworn declaration of Christopher Oppman, the director for the Bureau of Health Care Services for the Department of Corrections:

“Beyond the records previously provided to Ms. Haines, the Department does not have within its custody, possession, or control, reports of illnesses contracted at SCI-Fayette, by type and quantity and comparison of illness rates at other state correctional institutions,” Oppman wrote in the sworn statement.

A week earlier the DOC had put out a news release on its public website stating in part:

“A more detailed analysis of the 11 cancer deaths at SCI Fayette from 2010 to 2013, revealed that four were transferred to SCI Fayette after they had been diagnosed with cancer at other institutions. Two patients were diagnosed with lung cancer while at SCI Fayette during this four-year time frame.”

No records from that “detailed analysis” were released to the Herald-Standard.

When the Herald-Standard reiterated in recent emails to DOC attorney Chase Defelice that the paper was seeking information on illnesses diagnosed at SCI-Fayette since it opened in 2003, Defelice denied that the DOC is required to provide that, despite the earlier ruling of the OOR that the information is public.

“We do not have any such records that are that specific beyond going through every

medical record, which is not required,” Defelice wrote.

Melissa Melewsky, media law counsel with the Pennsylvania Newsmedia Association, Defelice is mistaken about the law’s requirements.

“They do have to provide records that would be responsive to your request, even if it means going through individual records. The law has said that the amount of work an agency has to do to provide public information is immaterial. That’s an appropriate expenditure of public funds.”

The Herald-Standard has received a number of medically-related documents from the DOC, none of which address the issue of where illnesses were diagnosed, or the types of illnesses other than the broad categories of cancer, pulmonary or gastrointestinal.

Melewsky said it is not uncommon for members of the media to be given documents other than what they asked for in an Open Records request.

“You have to file an enforcement action with means either going through the Office of Open Records or hiring an attorney on your own and filing suits in Common Pleas or Commonwealth Court. It’s never a good situation when an individual has won at the Office of Open Records then has to take legal action to get the information,” Melewsky said.

As for the DOC now saying that the requested documents do not exist, Melewsky said that argument should have been raised from the start, not brought up after the appeal period had ended.

“They had to say that in the course of the appeal, they can’t bring in new grounds now,” Melewsky said. “They have had their chance to say to the Office of Open Records why these are not public records. They didn’t do that, so any additional time and effort should be spent on providing the records.”

The Herald-Standard is seeking enforcement action through the Office of Open Records.

EXHIBIT G

**Don Hopey, *State, Corrections Union Investigate Health at Prisons by
Coal Sites***



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State, corrections union investigate health at prisons by coal sites

September 17, 2014 12:00 AM

By Don Hopey / Pittsburgh Post-Gazette

The union representing state corrections officers will conduct a health survey of present and former members working at SCI Fayette and three other prisons built near coal ash disposal or coal mining operations.

The Pennsylvania State Correctional Officers Association announced it will do the survey in the wake of a report by two human rights groups earlier this month that found inmates at the state prison along the Monongahela River at LaBelle, Fayette County, were experiencing high numbers of cancers and other health problems.

That report linked the inmate health issues, including cancers and respiratory, gastrointestinal, skin and thyroid problems, to the water supply and exposure to dust from a 500-acre coal combustion waste disposal site that borders the prison on two sides.

Jason Bloom, PSCOA vice president, called the inmate health report “alarming,” and, in a written statement released Friday, said the union is already aware of several cases of kidney, thyroid and breast cancers among its members at SCI Fayette.

The state Department of Corrections, in conjunction with the state Department of Health, also announced it will look at inmate health records at SCI Fayette.

Mr. Bloom said the union is involved in an arbitration case now in which it is alleging that the drinking water of the prison caused the kidney cancer of a corrections officer. The prison gets its drinking water from the Tri-County Joint Municipal Authority, which draws its water supply from the Monongahela River.

The union also will review health claim arbitration records for past and present members employed at SCI-Mahanoy and SCI-Frackville, both in Schuylkill County, and SCI-Coal Township, Northumberland County.

Susan McNaughton, a spokeswoman for the state Department of Corrections, said that after the human rights groups’ report, DOC Secretary John Wetzel directed the department’s Bureau of Health Care Services to work with the state Department of Health on a review of SCI-Fayette inmate health records.

“We’re looking at all the medical records of inmates at Fayette, and that’s an ongoing review,” Ms.

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McNaughton said. She does not know how long it will take to complete the review.

The union already has reviewed five years of employee arbitration cases at SCI Fayette and identified two other cases involving breast and thyroid cancers that may be linked to environmental factors.

Eric Garland, a corrections officer who worked at SCI Pittsburgh until 2003 before moving to SCI Fayette, said there are more.

"I know of others who have cancer, who have died of cancer. But some are unwilling to get involved due to worries about their jobs," said Mr. Garland, who developed hypothyroidism, an under-active thyroid condition, in 2008, five years after moving to SCI Fayette.

"I put in a union grievance in 2011 suggesting we get a union health survey going, but the human rights reports and pressure from the staff seem to have lit a fire under them," he said. "I believe such a survey will reveal a problem. I don't know everyone there, but just from knowing what I know, I believe a lot of people have become sick there."

SCI Fayette has a staff of approximately 600 employees, including about 500 corrections officers.

The maximum security, 2,000-inmate prison was built in 2003 on part of an abandoned strip mine that had been used for disposal of coal waste and combustion waste, including fly ash from power plants, for 60 years.

The site contains approximately 40 million tons of coal mining waste rock and coal combustion waste, known as fly ash, and has been owned since 1997 by Matt Canestrone Construction Inc.

The report by the human rights organizations noted that many of the prisoners surveyed said the prison cells, window sills and vents were regularly covered with fine black dust, similar to coal ash. A 2006 report by the National Academy of Sciences identified 24 potentially hazardous metals in coal ash.

Don Hopey: dhohey@post-gazette.com or 412-263-1983.

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Maryjane Grimm 173 days ago

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Four Quick Questions

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EXHIBIT H

CorrectionsOne Staff, Advocates: *Fly Ash near State Prison Causing Health Problems*

CORRECTIONSONE News

09/02/2014

Advocates: Fly ash near state prison causing health problems

New report points to health problems experienced by inmates after arriving at the prison

By C1 Staff

FAYETTE COUNTY, Pa. — A preliminary report found that 11 prisoners died at the State Correctional Institute Fayette in LaBelle from cancer, believed to be caused by a nearby coal waste dump full of toxic fly ash.

The **Post-Gazette** reports that another six inmates have been diagnosed with cancer and another eight have undiagnosed tumors or lumps.

The report, conducted by the Abolitionist Law Center and the Human Rights Coalition, is based on a year-long review of prison medical and mortality records, interviews with prisoners, former inmates and residents of LaBelle, and correspondence from more than 40 inmates.

More than 80 percent of 75 prisoners responding to the investigators experienced respiratory problem, 68 percent said they experienced gastrointestinal problems and half have skin rashes, cysts and abscesses.

Twelve percent, nine of the 75, reported being diagnosed with a thyroid disorder at the prison or having their existing thyroid problems get worse. Many of the prisoners have multiple, overlapping symptoms.



SCI-Fayette County, a state maximum security prison, is located just below the large, fly-ash dump in LaBelle, Fayette County. (Photo Robin Rombach/Post-Gazette)

Susan McNaughton, a state Department of Corrections spokeswoman, said that once the report is released the department would review its findings and the issues and concerns it raises.

Another spokesman for the Pennsylvania State Corrections Officers Association declined to comment but expressed concern for the union's members.

"We are aware of some officers from SCI Fayette who are suffering from illness," he said. "We look forward to reviewing this report to see if there is any connection."

The 2,000 bed, \$125 million maximum security prison where all of the state's vehicle license plates are made opened in 2003. It was built on part of the old strip mine site that has been used for coal combustion waste disposal for 60 years and has been owned since 1997 by Matt Canestrone Construction Inc.

The combustion waste at the 506-acre Canestrone site, which borders the prison on two sides, includes 40 million tons of coal mining waste rock, two coal slurry ponds and millions of cubic yards of fly ash from FirstEnergy Corp.'s Mitchell and Hatfield's Ferry coal-burning power plants in Washington and Greene counties. The plants were closed by the company in October 2013.

Many of the prisoners surveyed for the report noted similar, visible signs of pollution that include "black clouds of debris blowing off the dump site; black dust collecting in the prison yard, on window sills and freshly fallen snow; and black and gray dust building up around the vents inside prison cells."

Fly ash is a fine particle material with the consistency of talcum powder and containing sometimes high levels of carcinogenic heavy metals, including arsenic, lead and mercury. Peer-reviewed health studies have linked the fine

particles to the four leading causes of death in the U.S. – heart disease, cancer, respiratory disease and stroke.

[Back to previous page](#)

EXHIBIT I

**Emily Petsko, *Report Alleges Link between Fly Ash, Health Problems
at SCI-Fayette***

Washington Co. (/section/NEWS01)

Published: September 5, 2014 - Updated: September 6, 2014 10:44 pm

Report alleges link between fly ash, health problems at SCI-Fayette



By Emily Petsko
Staff writer



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Courtesy Abolitionist Law Center / Human Rights
Coalition

LaBELLE – A yearlong investigation into health problems reported by 75 inmates at the State Correctional Institution in Fayette County revealed a “disturbing pattern” of illnesses, according to two advocacy groups.

The report, released this week by the Abolitionist Law Center and the Human Rights Coalition, (<http://abolitionistlawcenter.files.wordpress.com/2014/09/no-escape-3-3mb.pdf>) points to a coal

dump containing fly ash – adjacent to the prison – as a likely contributor to the high rates of cancer, skin problems and respiratory and gastrointestinal ailments among inmates.

The 506-acre coal dump, operated by Matt Canestrone Contracting in LaBelle, Luzerne Township, contains “about 40 million tons of waste, two coal slurry ponds, and millions of cubic yards of coal combustion waste,” according to the report. The prison sits on a hill above the Monongahela River, and Fredericktown, in East Bethlehem Township, is across the river from LaBelle.

Ben Fiorillo, a volunteer with the Human Rights Coalition, said the results are preliminary, but the two groups are reaching out to medical professionals and environmental experts in order to conduct more empirical studies.

However, he said the results from the inmate surveys are still alarming because they are consistent with known health effects from fly ash.

“These are people – real people – who are locked up and can’t remove themselves from the situation, and who are very sick,” Fiorillo said.

According to the report, more than 81 percent of prisoners reported having respiratory, throat or sinus conditions, and 68 percent had gastrointestinal problems. Of those surveyed, 52 percent reported having skin conditions – rashes, hives, cysts and abscesses – and 12 percent said they were diagnosed with a thyroid disorder at the prison or experienced worsening symptoms.

Eleven prisoners died from cancer at the prison between January 2010 and December 2013. Another six prisoners reported being diagnosed with cancer at the prison, and eight reported having undiagnosed tumors and lumps.

Marcus Santos, an inmate from Dauphin County, shared his personal experience with the two groups.

“I was given Tums for throat swelling and told that if I start choking there is nothing that he can do for me,” Santos said in the report. “At that point, it became clear to me that I am being left for dead. With no other course to take or relief in sight, I called my brother and told him that I don’t believe I’m going to make it through the rest of my time and to please take care of my son.”

The report alleges that “the patterns of illnesses described in this report, coupled with the prison being geographically enveloped by a toxic coal waste site, point to a hidden health crisis impacting a captive and vulnerable population.”

The Center for Coalfield Justice also took part in the investigation. Eva Westheimer, community organizer with the center, said it teamed up with other groups to illustrate the “injustices” faced by the LaBelle and SCI-Fayette communities.

“Living next to a coal ash impoundment, which was once a coal refuse disposal area, has degraded the quality of life for community members, including those who are incarcerated and work at SCI-Fayette,” Westheimer said in a written statement. “The Center for Coalfield Justice believes that everyone

deserves the right to health, wellness and the right to clean air and clean water.”

Paul Battaglini, East Bethlehem Township Council President, said he has not heard any complaints or concerns from residents regarding the coal ash dump.

John Poister, spokesman for the Department of Environmental Protection, said all permits for the facility are up-to-date, but it is not currently operating. The coal dump is permitted to receive coal ash from FirstEnergy Corp.’s Mitchell and Hatfield power plants, which have since closed.

In a FirstEnergy news release from January 2013, the company announced its plans to send scrubber material and coal combustion byproducts from its Bruce Mansfield Plant in Beaver County for “beneficial use at a coal mine reclamation project” in LaBelle starting Jan. 1, 2017.

Poister said FirstEnergy has not yet specified where it wants to ship the coal ash, which would be required before the DEP can consider its permit application.

”At this point, we are awaiting First Energy’s response,” Poister said.

Poister said there have been complaints in the past about the coal dump – mostly pertaining to dust and truck traffic - but all complaints have been closed and the facility is in compliance with state regulations.

Fiorillo said a positive link between the coal dump and health effects could be grounds for a lawsuit.

According to the report, “Situating a prison in the midst of a massive toxic coal waste dump may be impermissible under the Constitution if it is shown that prisoners face a substantial risk of serious harm caused by exposure to pollutants from the dump.”

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EXHIBIT J

**Scott Beveridge, *Human Rights Groups to Launch a Health Survey at
SCI-Fayette***

Washington Co. (/section/NEWS01)

Published: February 11, 2015 - Updated: February 12, 2015 11:02 pm

Human rights groups to launch a health survey at SCI-Fayette



By Scott Beveridge
Staff Writer



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Scott Beveridge / Observer-Reporter

The State Correctional Institution-Fayette in
LaBelle, Fayette County **[Order a Print](#)**

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Human rights groups Wednesday announced they would carry out an independent health review of inmates at State Correctional Institution-Fayette to investigate complaints about health problems at the prison that sits beside a coal ash dump and is served by a troubled water authority.

The Abolitionist Law Center and Human Rights Coalition said they will send an eight-page survey to the more than 2,000 prisoners at SCI-Fayette, and ask them to complete and return it by mail.

Prisoners, former and current guards and nearby residents reported illnesses and symptoms consistent with exposure to toxic coal waste, the groups said. However, in a December news release, the Department of Corrections said it found no “credible evidence of any unsafe environmental conditions” at SCI-Fayette.

“We stand by our report,” said DOC Press Secretary Susan McNaughton.

McNaughton said the state Department of Health confirmed the DOC’s findings in the matter.

The groups pointed to news reports that indicated the prison is served by the Tri-County Municipal Authority in Fredericktown, just across the Monongahela River, which has been reporting levels of the potential cancer-causing chemicals known as trihalomethanes in its supply. The 500-acre dump is operated by Matt Canestrone Contracting, they said.

“The (state) Department of Corrections has been notified of the survey and reminded of its responsibility to comply with constitutional standards that prohibit censorship of mail sent to prisoners,” the groups stated in a news release.

Meanwhile, the Center for Coalfield Justice in Washington will carry out a similar survey of the nearly 300 people who live in LaBelle, which sits on the other end of the dump.

“This survey of both residents of LaBelle and incarcerated people will provide a better picture of health problems in the immediate area around the dump, something which has not been done before,” said Eva Westheimer, a community organizer with Coalfield Justice.

John J. Yanik of Hopwood, Fayette County, is among the former prison guards there who developed cancer, and he has been calling for an investigation into the facility.

“I’m glad to hear about that being done,” Yanik said after learning about the health survey.

“I have the feeling it’s going to be the inmates who will get something done,” he said.

EXHIBIT K

Rich Lord, *Pennsylvania Officials Refute Claims State Prison in Fayette County is Unhealthy*

Pennsylvania officials refute claims state prison in Fayette County is unhealthy

December 31, 2014 11:42 PM

By Rich Lord / Pittsburgh Post-Gazette

Inmates at a prison next to a Fayette County coal waste dump aren't suffering from environmental poisoning, the Department of Corrections claimed Wednesday in response to a report by advocacy groups.

The 2,048 inmates at the State Correctional Institution Fayette, in LaBelle, built next to 506 acres of coal mining waste rock, slurry and fly ash from power plants, don't have unusual cancer rates or abnormal needs for pulmonary medicine, the department indicated in a two-page summary.

"The department found no evidence of any unsafe environmental conditions or any related medical issues," said Corrections Secretary John Wetzel, in the release.

The department looked at medical logs in response to a report issued in September by the Abolitionist Law Center and the Human Rights Coalition. The report, called "No Escape: Exposure to Toxic Coal Waste at State Correctional Institution Fayette," found that 80 percent of 75 prisoners responding to investigators experienced breathing problems, with high rates of skin conditions and gastrointestinal problems also reported.

Since then, the groups "have received many, many more reports from people at SCI Fayette that are right in keeping with the pattern that we have seen," said Bret Grote, legal director for the Abolitionist Law Center. "If we are able to develop the necessary evidence to prove the case, then there is a constitutional claim."

The department, though, found "no significant difference in the number and types of health issues raised by residents at SCI Fayette when compared to other Pennsylvania prisons," according to its summary.

The department characterized SCI Fayette's cancer rate as in the middle of the pack of state prisons,

with cancer mortality ranked seventh among 26 facilities.

“They mischaracterized the premise of our findings in a way that they knew was going to allow them to clear themselves,” Mr. Grote said, noting that the finding of unhealthy conditions went beyond cancer rates. He said that the groups demand documentation of the scope and depth of the department’s review, and want an independent probe including testing of air, soil, water and inmates.

Corrections spokeswoman Sue McNaughton said that her agency feels “very strongly” that the data doesn’t back the groups’ claims, but has also asked the Department of Health “to take a look at it.” A Department of Health spokeswoman confirmed that the two agencies are working together.

Mr. Grote said that coal waste is highly toxic, and the prison should be closed. “Nobody, including prisoners, should be forced to live in an environmental waste zone,” he said.

The dump bordering the prison is currently inactive, but could accept more coal ash as other sites close.

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EXHIBIT L

**Christine Haines, *Group Alleges Connection between Coal Ash and
Prison Illnesses***

Group alleges connection between coal ash and prison illnesses

By Christine Haines chaines@heraldstandard.com | Posted: Thursday, September 4, 2014 2:30 am

Civil rights groups are calling for further investigation into the possible connection between illnesses reported at SCI-Fayette and the prison's proximity to a coal ash disposal facility.

The 21-page report., "No Escape: Exposure to Toxic Coal Waste at State Correctional Institution Fayette, was released this week by the Abolitionist Law Center and the Human Rights Coalition. The report notes that the Luzerne Township prison is surrounded by "about 40 million tons of waste, two coal slurry ponds and a million cubic yards of coal combustion waste," calling that site a "massive toxic waste site."

The report is referring to Matt Canestrале Contracting, which has taken coal fly ash from area coal-fired power plants, listed by the state Department of Environmental Protection as a permitted coal disposal site.

"They are using it as fill in the reclamation process," said Amanda Witman of the DEP.

That is one of the beneficial uses listed by the federal government for the coal fly ash.

Operations at the Canestrале disposal site ended this summer, following the closing of two area power plants, though the company has submitted an application to possibly resume operations in 2017. The current closure is not enough to satisfy the concerns of the Abolitionist Law Center and the Human Rights Coalition, according to spokesman Ben Fiorillo.



SCI Fayette

Roberto M. Esquivel|Herald-Standard
Pictured in this 2008 file photo is SCI Fayette located in Luzerne Township near a site using coal ash for mining reclamation.

“It means the ash is not being actively hauled up the road and dumped, but we still get reports of ash blowing off the dump and being visible there (at the prison).”

The nonprofit human rights organizations began studying the problem after receiving letters from inmates detailing problems ranging from skin irritations to cancers that they felt were related to the fly ash.

Coal fly ash is not considered to be toxic or hazardous waste by the state Department of Environmental Protection or by the federal Environmental Protection Agency.

Fiorillo said that is a point of contention.

“There are environmental groups trying to have that changed,” Fiorillo said.

According to the Material Safety Data Sheet on coal ash from Duke Energy provided by Fiorillo, “Individuals with pre-existing conditions of emphysema or asthma may experience respiratory irritation from breathing dust. Skin conditions or dermatitis may be aggravated by contact with this material.”

Fiorillo said the groups developed a survey taken by the inmates who had contacted them, plus additional inmates who heard about it from the original men who contacted the groups. In a survey of 75 of the more than 2,000 inmates at SCI-Fayette, the report states that 80 percent reported having respiratory problems after moving into the prison. Some who have been transferred, say the problems went away or were greatly reduced after the move.

The emergency overview on the MSDS sheet for coal fly ash states:

“Contact with wet skin may cause severe irritation. Eye contact can cause severe irritation or conjunctivitis. Inhalation of dust may irritate the throat or lungs. Long-term overexposure may reduce pulmonary function.”

Also from the MSDS sheet regarding accidental spills: “Dispose of as conventional waste suitable for a municipal landfill.”

The MSDS sheet does say that exposure above Occupational Safety and Health Administration limits could have more severe consequences:

“Long-term exposure to fly ash in extremely dusty environments (above the OSHA PEL) may result in pathology of the nerves in the extremities, blood-forming effects such as anemia, gastrointestinal irritation/colic, and cancer of the skin, liver, and lungs.”

But the data sheet also notes that fly ash is not considered hazardous under the Resource Conservation and Recovery Act.

“This material is not a RCRA listed hazardous waste nor does it exhibit any hazardous waste characteristics,” the MSDS sheet states.

According to a news release and the report: “Situating a prison in the midst of a massive toxic coal waste dump may be impermissible under the Constitution if it is shown that prisoners face a substantial risk of serious harm caused by exposure to pollutants from the dump.”

“If the patterns of illnesses we’re seeing at SCI-Fayette are indeed related to pollution from the dump, then this prison should be shut down,” ALC attorney Dustin McDaniel is quoted as saying in the release.

The prison was opened in 2003.

Both the state Department of Corrections and the Pennsylvania State Corrections Officers Association, which represents prison guards, were made aware of the report just this week.

“Because we take these matters seriously, our staff is in the process of reviewing the report and its findings,” Susan McNaughton, Department of Corrections media relations, stated.

“We are aware of an officer from SCI Fayette who is suffering from an illness. We are reviewing our records related to SCI-Fayette, and the contents of this report, to see if there is any connection,” said David LaTorre, spokesman for the Pennsylvania State Corrections Officers Association.

Fiorillo said the next step is for independent environmental and medical studies to be done.

“I think we need an independent study of air pollution because we have found that the DEP is not doing its job and is closely related to industry,” Fiorillo said. “The DEP needs to have somewhere to put the coal ash that comes out of the power plants.”

Fiorillo said his organizations would like to see independent studies by a research institution or an academic researcher.

Fiorillo said the coal ash study could lead to a federal suit alleging violation of the inmates’ Constitutional rights.

“If we do find that coal ash presents a substantial risk to prisoner health, we would take on a class-action suit. Lawyers fees are paid in such cases,” Fiorillo said. “The intent of the study is to raise questions and what is going on there and why the Department of Corrections decided to site a prison next to an active dump and on a

strip mine site.”